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FLORIDA LAW RELATING TO THE MENTALLY ILL, AND REHABILITATION OF ALCOHOLICS 1971

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PARTMENT OF HEALTH AND REHABILITATIVE SERVICES
DIVISION OF MENTAL HEALTH

*INDEX OF LAWS QUOTED IN FULL

Chapter 394	Mental Health
Chapter 396	Control of Alcoholism
Chapter 801	Child Molestor Act
Chapter 917	Mentally Disordered Sex Offenders
Excerpts Of Other Laws:	
Chapter 402	Health and Rehabilitative Services
Section 90.242	Psychiatrists as Witnesses
Section 490.32	Psychologists as Witnesses

*Although not included in this pamphlet, reference should be made to Rule 1.210 of the Florida Rules of Criminal Procedure for commitment of patients with criminal charges that are not committed under Chapters 801 & 917. Copies may be obtained from the Office of Information Services, The Florida Bar, Apalachee Parkway, Tallahassee, Florida 32304.

This pamphlet is published for the use of those professional persons in Florida who do not usually have the Florida Statutes on their bookshelves. It reproduces, in one place, the full text of the laws relating to the care and treatment of the mentally ill, and the rehabilitation of alcoholics. A directory of Mental Health Resources in Florida is available and will be furnished upon request.

STATE OF FLORIDA
Reubin O'D. Askew, Governor

DEPARTMENT OF HEALTH & REHABILITATIVE SERVICES
Emmett S. Roberts, Secretary

DIVISION OF MENTAL HEALTH
W. D. Rogers, M.D., Director
425 Larson Building
Tallahassee, Florida 32304

Note: This pamphlet does not include laws enacted by the 1972 Legislature. When available, copies of such laws will be furnished upon request.

PART I
FLORIDA MENTAL HEALTH ACT

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***394.451 Short title.**—This part I of chapter 394 shall be known as "The Florida Mental Health Act" or "The Baker Act."

History.—§1, ch. 71-131.

***Note.**—Effective July 1, 1972.

***394.453 Legislative intent.**—It is the intent of the legislature to authorize and direct the department of health and rehabilitative services to evaluate, research, plan, and recommend to the governor and the legislature programs designed to reduce the occurrence, severity, duration, and disabling aspects of mental, emotional, and behavioral disorders. The department of health and rehabilitative services is directed to implement and administer programs through the division of mental health as authorized and approved by the legislature, based on the department's annual program budget. It is the further intent of the legislature that programs of the department shall coordinate the development, maintenance, and improvement of receiving and community treatment facilities within the programs of the district mental health boards as authorized by the community mental health act, part IV of this chapter. Treatment programs shall include, but not be limited to, comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short term and continued treatment in order to encourage them to assume responsibility for their treatment and recovery. It is intended that patients shall be provided with emergency service and temporary detention for evaluation when required; that patients be admitted to treatment facilities on a voluntary basis when extended or continuing care is needed and unavailable in the community; that involuntary hospitalization be provided only when expert evaluation determines that it is necessary; and that individual dignity and human rights be guaranteed to all persons admitted to mental health facilities.

History.—§2, ch. 71-131.

***Note.**—Effective July 1, 1972.

***394.455 Definitions.**—As used in this part, unless the context clearly requires otherwise:

(1) "Hospital" means a public or private hospital or institution or part thereof licensed by the division of health of the department of health and rehabilitative services and equipped to provide inpatient care and treatment facilities, or any hospital under the supervision of the department.

(2) "Physician" means an individual licensed or authorized to practice medicine or osteopathy under the laws of Florida.

(3) "Mentally ill" means having a mental, emotional, or behavioral disorder which substantially impairs the person's mental health.

(4) "Department" means the department of health and rehabilitative services.

(5) "Division" means the division of mental health of the department of health and rehabilitative services.

(6) "Secretary" means the secretary of the department of health and rehabilitative services.

(7) "Director" means the director of the division of mental health of the department of health and rehabilitative services.

(8) "Mental health board" means the board within a board district established in accordance

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with the provisions of the community mental health act, part IV of this chapter, for the purposes of administering the community mental health program.

(9) "Board district" means that area over which a single mental health board has jurisdiction for administering mental health programs as provided by the community mental health act, part IV of this chapter, and may consist of one or more services districts.

(10) "Facility" means any state-owned or state-operated hospital or state-aided community facility designated by the department to be utilized for the evaluation, diagnosis, care, treatment, training, or hospitalization of persons who are mentally ill, and any other hospital within the state approved and designated for such purpose by the department.

(11) "Community facility" means a facility which receives funds from the state under the community mental health act, part IV of this chapter.

(12) "Receiving facility" means a facility designated by the department to receive patients under emergency conditions or for psychiatric evaluation and to provide short term treatment.

(13) "Treatment facility" means a state-owned, state-operated, or state-supported hospital, center, or clinic designated by the department for the treatment and hospitalization of persons who are mentally ill.

(14) "Private facility" means any hospital or facility operated by a nonprofit corporation or association or a proprietary hospital approved by the department.

(15) "Patient" means any mentally ill person who seeks hospitalization under this part, or any person for whom such hospitalization is sought.

(16) "Administrator" means the chief administrative officer of a receiving or treatment facility or his designee.

(17) "Staff member" means an employee of a receiving or treatment facility who has been designated as a staff member by the department.

(18) "Law enforcement officer" means any city police officer, officer of the state highway patrol, sheriff, or deputy sheriff.

(19) "Guardian" means a natural guardian of a minor or a legal guardian appointed by a court to maintain custody and control of the person or of the property of an incompetent.

(20) "Representative" means a person appointed to receive notice of proceedings for and during hospitalization and to take actions for and on behalf of the patient.

(21) "Court," unless otherwise specified, means the county judge's court.

(22) "Judge," unless otherwise specified, means the county judge.

(23) "Clinical record" means all parts of the record required to be maintained and includes all medical records, progress notes, charts, admission and discharge data, and all other information recorded by a facility which pertains to the patient's hospitalization and treatment.

History.—§3, ch. 71-131.
***Note.**—Effective July 1, 1972.

***394.457 Operation and administration.**—

(1) ADMINISTRATION.—The department, by and through the division of mental health, is designated the mental health authority of Florida. The department shall exercise executive and administrative supervision over all division facilities, programs, and services.

(2) RESPONSIBILITIES OF THE DEPARTMENT.—The department is responsible, through the division, for the planning, evaluation and coordination of a complete and comprehensive statewide program of mental health including community services, receiving and treatment facilities, child services, research, and training. The department is also responsible, through the division, for the implementation of programs and coordination of efforts with other departments and divisions of the state government, county and municipal governments, and private agencies concerned with and providing mental health services. It is responsible for establishing standards, providing technical assistance, and exercising supervision of mental health programs of state-supported community facilities and other facilities for the mentally ill. It shall stimulate research by public and private agencies, institutions of higher learning, and hospitals in the interest of the elimination and amelioration of mental illness.

(3) POWER TO CONTRACT.—The department, through the division, may contract with the following agencies to provide, and be provided with, services and facilities in order to carry out its responsibilities under this part: district mental health boards; public and private hospitals; clinics; laboratories; departments, divisions and other units of state government; state colleges and universities; junior colleges; private colleges and universities; counties, municipalities, and any other governmental unit; and any other public or private entity which provides or needs facilities or services. The department shall make periodic audits and inspections to assure that the contracted services are provided and meet the standards of the department.

(4) APPLICATION FOR AND ACCEPTANCE OF GIFTS AND GRANTS.—The department, through the division, may apply for, and accept any funds, grants, gifts, or services made available to it by any agency or department of the federal government or any other public or private agency or individual in aid of mental health programs. All such moneys shall be deposited in the state treasury and shall be disbursed as provided by law.

(5) RULES AND REGULATIONS; PERSONNEL.—

(a) The department shall adopt rules and regulations necessary for administration of this

part in accordance with the administrative procedure act, chapter 120.

(b) The director of the division of mental health shall be qualified for the position by graduation from an accredited school of medicine and be licensed to practice medicine in at least one state and shall have sufficient training and experience in the field of psychiatry to meet the requirements for examination by the American Board of Psychiatry and Neurology, Inc., or be a qualified licensed practicing physician.

(c) The department shall, by regulation, establish standards of education and experience for professional and technical personnel employed in mental health programs.

(6) HEARING EXAMINERS.—

(a) One or more hearing examiners shall be appointed by the secretary to hold hearings for continued hospitalization. Such hearing examiners shall be members of The Florida Bar and shall be compensated by the department.

(b) In the conduct of hearings the hearing examiner shall have the authority to:

1. Administer oaths and affirmations;
2. Sign and issue subpoenas for the appearance of witnesses and production of documents required for the conduct of the hearing;
3. Rule on evidence;
4. Provide for the taking of testimony by deposition.

(c) If a subpoena issued by the hearing examiner is disobeyed, the hearing examiner may apply to the circuit court of the county in which the hearing is held for an order requiring compliance.

(d) In the event a patient cannot afford counsel in a hearing before the hearing examiner, the hearing examiner shall apply to the appropriate court of the county from which the patient originated and the court shall appoint an attorney for the patient.

(e) An order of the hearing examiner shall be reviewable by the circuit court of the county in which the hearing is held.

(7) PAYMENT FOR CARE OF PATIENTS.—Fees for patients in treatment facilities shall be based on a fee schedule prepared and published by the department. Fees shall be collected by the division and be based on cost of care and ability to pay. An unpaid fee shall constitute a lien on the nonexempt property of the patient; however, payment of charges shall not be a prerequisite to treatment. Legal action for recovery of unpaid fees shall be brought by the department or by the department of legal affairs for the department.

(8) DESIGNATION OF TREATMENT FACILITIES.—Florida State Hospital located at Chattahoochee, Gadsden County; G. Pierce Wood Memorial Hospital located at Arcadia, DeSoto County; South Florida State Hospital located at Hollywood, Broward County; Northeast Florida State Hospital located at Macclenny, Baker County; and such other facilities as may be established by law or designated by the department are designated as treatment facilities.

History.—§1, ch. 57-317; §1, ch. 59-222; §1, ch. 65-13; §3, ch. 65-22; §1, ch. 65-145; §1, ch. 67-334; §§11, 19, 31, 35, ch. 69-106; §4, ch. 71-131.

***Note.**—Effective July 1, 1972.

Note.—Formerly §965.01(3), §402.10.

***394.459 Rights of patients.—**

(1) RIGHT TO INDIVIDUAL DIGNITY.—The policy of the state is that the individual dignity of the patient shall be respected at all times and upon all occasions, including any occasion when the patient is taken into custody, detained, or transported. Procedures, facilities, vehicles, and restraining devices utilized for criminals or those accused of crime shall not be used in connection with the mentally ill except for the protection of the patient or others. No person who is receiving treatment for mental illness in a hospital shall be deprived of any constitutional rights. However, if such a person is adjudicated incompetent pursuant to the provisions of this part, his rights may be limited to the same extent the rights of any incompetent person are limited by general law.

(2) RIGHT TO TREATMENT.—The policy of the state is that the department shall not deny treatment for mental illness to any person, and that no services shall be delayed at a receiving or treatment facility because of inability to pay.

(3) QUALITY OF TREATMENT.—

(a) Each patient in a facility shall receive treatment suited to his needs, which shall be administered skillfully, safely, and humanely with full respect for his dignity and personal integrity. Each patient shall receive such medical, vocational, social, educational, and rehabilitative services as his condition requires to bring about an early return to his community. In order to achieve this goal the department is directed to coordinate the programs of the division with all other divisions of the department.

(b) If a patient is able to secure the services of a private physician, he shall be allowed to see his physician at any reasonable time. The department shall establish regulations designed to facilitate examination and treatment by private physicians on a consulting basis.

(4) COMMUNICATION AND VISITS.—

(a) Each patient in a facility has the right to communicate freely and privately with persons outside the facility unless it is determined that such communication is likely to be harmful to the patient or others.

(b) Each patient shall be allowed to receive, send, and mail sealed, unopened correspondence, and no patient's incoming or outgoing correspondence shall be opened, delayed, held, or censored by the facility unless there is reason to believe that it contains items or substances which may be harmful to the patient or others, in which case the administrator may direct reasonable examination of such mail and may regulate the disposition of such items or substances.

(c) If a patient's right to communicate is restricted by the administrator, written notice of such restriction shall be served on the patient and his guardian or representatives, and such restriction shall be recorded on the patient's clinical record with the reasons therefor. The restriction of a patient's right to communicate shall be reviewed at least every ninety days.

(d) The department shall establish reasonable regulations governing visitors, visiting hours, and the use of telephones by patients.

(5) CARE AND CUSTODY OF PERSONAL EFFECTS OF PATIENTS.—A patient's right to his clothing and personal effects shall be respected. The administrator may take temporary custody of such effects when required for medical and safety reasons. Custody of such personal effects shall be recorded in the patient's clinical record.

(6) VOTING IN PUBLIC ELECTIONS.—A patient in a facility who is eligible to vote according to the laws of the state has the right to vote in the primary and general elections. The department shall establish rules and regulations to enable patients to obtain voter registration forms, applications for absentee ballots, and absentee ballots.

(7) EDUCATION OF CHILDREN.—The department shall provide education and training appropriate to the needs of all children in treatment facilities.

(8) CLINICAL RECORD; CONFIDENTIALITY.—A clinical record for each patient shall be maintained. The record shall include data pertaining to admission and such other information as may be required under regulations of the department. Unless waived by the patient or his guardian or attorney, the privileged and confidential status of the clinical record shall not be lost by either authorized or unauthorized disclosure to any person, organization, or agency. The clinical record shall not be a public record and no part of it shall be released, except:

(a) The record may be released to physicians, attorneys, and government agencies as designated by the patient, his guardian or his attorney.

(b) The record shall be produced in response to a subpoena or released to persons authorized by order of court, excluding matters privileged by other provisions of law.

(c) The record or any part thereof may be disclosed to a qualified researcher, a staff member of the facility, or an employee of the department when the administrator of the facility or secretary of the department deems it necessary for treatment of the patient, maintenance of adequate records, compilation of treatment data, or evaluation of programs.

(d) Information from the clinical records may be used for statistical and research purposes if the information is abstracted in such a way as to protect the identity of individuals.

(9) HABEAS CORPUS.—

(a) At any time, and without notice, a person detained by a facility, or a relative, friend, guardian, representative, or attorney on behalf of such person, may petition for a writ of habeas corpus to question the cause and legality of such detention and request that the county judge's court issue a writ for release. Each patient admitted to a facility for involuntary hospitalization shall receive a written notice of the right to petition for a writ of habeas corpus.

(b) A patient or his guardian or representatives may file a petition in the county judge's court in the county where the patient is hospitalized alleging that the patient is being unjustly denied a right or privilege granted herein or that a procedure authorized herein is being abused. Upon the filing of such a petition, the county judge's court shall have the authority to conduct a judicial inquiry and to issue any appropriate order to correct an abuse of the provisions of this part.

(10) TRANSPORTATION.—If neither the patient nor any person legally obligated or responsible for the patient is able to pay for the expense of transporting the patient pursuant to court order, the governing board of the patient's county shall arrange for such required transportation. The department shall promulgate rules and regulations to insure safe and dignified transportation for all patients.

(11) DESIGNATION OF REPRESENTATIVES; NOTICE OF ADMISSION.—

**(a) At the time a patient is admitted to a facility, the names and addresses of two representatives or one guardian shall be entered in the patient's clinical record.

1. A treatment facility shall give written notice of the patient's admission to his guardian or representatives.

2. A receiving facility shall give notice of admission to the patient's guardian or representatives by telephone or in person within twenty-four hours.

**(b) If the patient has no guardian, he may designate one representative; the second representative, or both in the absence of designation of one representative by the patient, shall be selected by the facility. The first representative selected by the facility shall be made from the following in the order of listing:

1. The patient's spouse;
2. An adult child;
3. Parent;
4. Adult next of kin;
5. Adult friend; or
6. The division of family services.

The second representative selected by the facility shall be without regard to the order of listing. If the facility can locate only one person from the categories listed above, it shall only be required to select one representative.

(c) Unless otherwise provided, notice to the patient's guardian or representatives shall be

served by registered or certified mail, and the date on which such notice was mailed shall be entered on the patient's clinical record.

(12) LIABILITY FOR VIOLATIONS.—Any person who violates or abuses any rights or privileges of patients provided by this act shall be liable for damages as determined by law. A physician, law enforcement officer, attorney, health officer, or hospital officer or employee, whether employed by a private hospital or at facilities operated by the state, a political subdivision of the state, or a hospital authority, who acts in good faith in compliance with the provisions of this part, shall be immune from civil or criminal liability for his actions in connection with the admission, diagnosis, treatment, or discharge of a patient to or from a facility.

History.—§5, ch. 71-131.
***Note.**—Effective July 1, 1972.
****Note.**—Paragraph edited in the interest of clarity.

***394.461 Facilities; transfers of patients.—**

(1) RECEIVING FACILITY.—The department, through the division, may designate any community facility as a receiving facility for emergency, short term treatment and evaluation. The governing board of any county is authorized to contract with the department or with the mental health board of a board district, with the approval of the department, to set aside an area of any facility of the department to function, and be designated as, the receiving facility. Any other facility within the state may be so designated by the department at the request of and with the consent of the governing officers of the facility.

(2) TREATMENT FACILITY.—Any state-owned, state-operated, or state-supported facility may be designated by the department as a treatment facility. Any other facility may be so designated by the department at the request of or with the consent of its governing officers.

(3) TRANSFERS OF PATIENTS.—

(a) Any patient who has been admitted to a treatment or receiving facility on a voluntary basis and is able to pay for treatment in a private facility may apply to the department for transfer at his expense to such private facility. An involuntary patient may be transferred at the discretion of the department.

(b) When the medical needs of the patient or efficient utilization of the facilities of the department require, a patient may be transferred from one facility of the department to another or, with the consent of the patient and his guardian or representatives, to a facility in another state.

(c) When any patient is to be transferred, notice shall be given to his guardian or representatives prior to the transfer.

History.—§6, ch. 71-131.
***Note.**—Effective July 1, 1972.

***394.463 Admission for emergency or evaluation.—**

(1) EMERGENCY ADMISSION.—

(a) *Criteria.*—A person may be admitted to a receiving facility on emergency conditions if there is reason to believe that he is mentally ill and because of such illness is likely physically to injure himself or others if he is not immediately detained.

(b) *Initiation of proceeding.*—An emergency admission may be initiated as follows:

1. A judge may enter an ex parte order stating that a person appears to meet the criteria for emergency admission, giving the findings on which that conclusion is based and directing that a law enforcement officer take the person into custody and deliver him to the nearest receiving facility for emergency examination and treatment. The order of the court shall be made a part of the patient's clinical record; or

2. A law enforcement officer may take a person who appears to meet the criteria for emergency admission into custody and deliver him to the nearest receiving facility for emergency examination and treatment. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record; or

3. A physician may execute a certificate that he has examined a person within the preceding forty-eight hours and finds that the person appears to meet the criteria for emergency admission, stating the observations upon which that conclusion is based. The physician's certificate shall authorize a law enforcement officer to take the person into custody and deliver him to the nearest available receiving facility for emergency examination and treatment. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and physician's certificate shall be made a part of the patient's clinical record.

(c) *Emergency examination.*—A patient who is admitted for an emergency examination and treatment by a receiving facility shall be examined by a physician without unnecessary delay, and may be given such treatment as is indicated by good medical practice.

(d) *Release of patient.*—At any time the examining physician concludes that the patient need not be hospitalized or that further evaluation is not necessary, the patient shall be discharged immediately unless the patient is under criminal charges, in which case he shall be returned to the custody of a law enforcement officer. The patient must be released within twenty-four hours of his admission except when the examining physician concludes that there is reason to believe that the patient may require evaluation, in which case, unless the patient voluntarily agrees to evaluation and hospitalization, a proceeding for court-ordered evaluation shall be initiated.

(2) COURT-ORDERED EVALUATION.—

(a) *Criteria.*—A person may be admitted to, or retained in, a receiving facility for evaluation

if there is reason to believe that he is mentally ill and a danger to himself or others.

(b) *Initiation of proceeding.*—A court-ordered evaluation may be initiated as follows:

1. Any person may file with the court a petition, executed under oath and supported by affidavits of two additional persons, requesting an evaluation of a person located in the county who is alleged to meet the criteria for a court-ordered evaluation; or

2. Any person may file with the court a petition executed under oath alleging that a person in the county meets the criteria for a court-ordered evaluation. The petition must be accompanied by the certificate of a physician stating that he has examined the patient within the preceding five days and has found that the patient may be mentally ill and in need of hospitalization and that a full evaluation is necessary.

(c) *Notice; hearing on petition.*—The judge shall set a hearing on the petition and shall serve notice of the time and place of such hearing on the patient, his guardian, if one has previously been appointed, and the person, if any, having custody and control of the patient. In the absence of a guardian, two other representatives for the service of the notice shall be designated by the court, one of whom, other than the person who filed the petition, shall be selected in the following order:

1. The patient's spouse;
2. An adult child;
3. Parent;
4. Adult next of kin;
5. Adult friend; or
6. The division of family services.

The second representative shall be selected from the above list without regard to the order of listing. The court shall make such efforts, as in its discretion it determines reasonable in view of the emergency, to contact the persons listed above in the order listed. The court shall notify any other person, including any persons whose names appear in the patient's court file, that the judge believes has a concern for the patient's welfare. The hearing shall be set within five days of the date of mailing the notice with a copy of the petition attached. The court shall grant a continuance upon application by the patient, his guardian, or a representative if such continuance is found necessary to permit preparation for the hearing. The hearing may be waived in writing by the patient. The patient and his guardian or representatives shall be informed of the right to counsel by the judge and, if the patient cannot afford an attorney to represent him at the hearing, the judge shall appoint one.

(d) *Order for evaluation.*—After a hearing or, if the hearing is waived, after a review of all evidence, if the judge is satisfied that immediate evaluation is necessary, he shall issue an order to any law enforcement officer to deliver the patient to a receiving facility for evaluation. If the judge is satisfied that evaluation is necessary, but that the patient need not be hospitalized immediately for his own safety or that of others, he may order the patient to appear at a designated receiving facility at a specified time within three days. If the patient fails to appear at the specified time, the order of the court, countersigned by the administrator of the facility to show that the person did not appear as ordered, shall authorize and direct any law enforcement officer to take the person into custody and deliver him to the specified receiving facility.

(e) *Evaluation by a receiving facility.*—A patient who is admitted to a receiving facility may be detained for a period not to exceed five days. The staff members of all receiving facilities shall encourage patients to apply for voluntary hospitalization if hospitalization appears necessary. Within the five day evaluating period one of the following actions shall be taken:

1. The patient shall be released;
2. The patient shall be released for outpatient treatment by a community facility;
3. The patient shall agree to hospitalization as a voluntary patient; or
4. Proceedings for involuntary hospitalization shall be initiated.

(3) DISCHARGE OF PATIENT.—At any time the patient is found not to require hospitalization for emergency treatment or evaluation, the receiving facility shall discharge the patient unless the patient is under criminal charges, in which case he shall be returned to the custody of a law enforcement officer. Notice of the discharge shall be given to the patient's guardian or representatives, to any physician who executed a certificate admitting the patient to the receiving facility, and to any court which ordered the patient's evaluation.

History.—§7, ch. 71-131.
***Note.**—Effective July 1, 1972.

***394.465 Voluntary admissions.—**

(1) AUTHORITY TO RECEIVE PATIENTS.—

(a) A facility may receive for observation, diagnosis, **[or] treatment any individual eighteen years of age or older making application for admission, any individual under eighteen years of age for whom such application is made by his parent or guardian, **[or] any person legally adjudged to be incompetent for whom such application is made by his guardian. If found to show evidence of mental illness and to be suitable for treatment, such person may be admitted to the facility.

(b) A facility may admit for evaluation, diagnosis, **[or] treatment any individual fourteen years of age or older who makes application therefor. If such individual is under eighteen years of age, his parent or guardian may apply for his discharge, and the administrator shall release the patient within five days of such application for discharge.

(2) RIGHT OF VOLUNTARY PATIENTS TO DISCHARGE.—

(a) A facility shall discharge a voluntary patient who has sufficiently improved so that hospitalization is no longer desirable. A patient may also be discharged to the care of a community facility. A voluntary patient or his guardian, representative, or attorney may request discharge in writing at any time following admission to the facility. This request may be submitted to a member of the staff of the facility for transmittal to the administrator. If the patient, or another on his behalf, makes an oral request for release to a staff member, such request shall be immediately entered in the patient's clinical record, and the patient must within three days be given counseling and assistance in preparing a written request. If a written request is submitted to a staff member, it shall be delivered to the administrator within twenty-four hours. Within five days of delivery of a written request for release to the administrator, the patient must be discharged from the facility or a plan instituted for a discharge of the patient. Such plan shall be approved by the patient. If discharge would be unsafe to the patient or others, proceedings for involuntary hospitalization must be initiated within three days of delivery of the written request. If the patient was admitted on his own application and the request for discharge is made by a person other than the patient, the discharge may be conditioned upon the agreement of the patient. If the patient is under the age of eighteen, his parent or guardian may act for him.

(b) Proceedings for involuntary hospitalization of a voluntary patient shall not be commenced unless written request for discharge has been filed with the administrator.

(3) NOTICE OF RIGHT TO RELEASE.—At the time of his admission and each six months thereafter, a voluntary patient and his guardian or representatives shall be notified in writing of his right to apply for a discharge.

(4) TRANSFER TO VOLUNTARY STATUS.—Staff members of all treatment facilities shall encourage an involuntary patient to transfer to voluntary status unless the patient is unable to understand the nature of voluntary hospitalization or unless voluntary hospitalization would be harmful to the patient, in which case a finding to this effect shall be entered in the patient's clinical record. Any involuntary patient who applies shall be transferred to voluntary status immediately, unless such transfer would not be in the best interest of the patient, in which case such finding shall be entered in the patient's clinical record and shall be subject to review every ninety days. When transfer to voluntary status occurs, notice shall be given to the patient and his guardian or representatives and, if the patient is hospitalized under an order of court, to the court which entered such order.

History.—§8, ch. 71-131.
***Note.**—Effective July 1, 1972.
****Note.**—"Or" substituted for "and" by the editors.

***394.467 Involuntary hospitalization.—**

(1) CRITERIA.—A person may be involuntarily hospitalized if he is mentally ill and likely to injure himself or others if not hospitalized.

(2) ADMISSION TO A TREATMENT FACILITY.—A patient may be hospitalized in a treatment facility, after notice and hearing, upon recommendation of the administrator of a receiving facility where the patient has been admitted for examination or evaluation. The hearing may be waived in writing by the patient. The recommendation must be supported by the opinions of two physicians who have personally examined the patient within the preceding five days that the criteria for involuntary hospitalization are met. Such recommendation shall be entered on a hospitalization certificate, which certificate shall authorize the receiving facility to retain the patient pending transfer to a treatment facility or completion of a hearing. The certificate shall be filed with the judge in the county where the patient is located and shall serve as a petition for a hearing regarding involuntary hospitalization. The certificate shall also be filed with the division, and copies shall be served on the patient and his guardian or representatives, accompanied by:

(a) A written notice, in plain and simple language, that the patient or his guardian or representative may apply at any time for a hearing on the issue of the patient's need for hospitalization if he has previously waived such a hearing;

(b) A petition for such hearing, which requires only the signature of the patient or his guardian or representative for completion;

(c) A written notice that the petition may be filed with a court in the county in which the patient is hospitalized at the time the certificate is executed or in the county of the patient's residence and the names and addresses of the judges of such courts; and

(d) A written notice that the patient or his guardian or representative may apply immediately to the judge to have an attorney appointed if the patient cannot afford one.

The petition may be filed at any time within six months of the date of the certificate. If the hearing is waived, the hospitalization certificate shall serve as authorization for the patient to be transferred to a treatment facility and as authorization for the treatment facility to admit the patient. The treatment facility may retain a patient for a period not to exceed six months from the date of admission. If continued hospitalization is necessary at the end of that period, the administrator shall apply to the hearing examiner for an order authorizing continued hospitalization.

(3) PROCEDURE FOR HEARING ON HOSPITALIZATION.—If the patient does not waive a hearing or if a patient or his guardian or representative files a petition for a hearing,

after having wavied it, the judge shall serve notice on the administrator of the facility in which the patient is hospitalized and shall hold the hearing within five days unless a continuance is granted. The patient, his guardian or representative, or the administrator may apply for a change of venue for the convenience of parties or witnesses or because of the condition of the patient. Venue may be ordered changed within the discretion of the judge. The patient and his guardian or representatives shall be informed of the right to counsel by the judge. If the patient cannot afford an attorney, the judge shall appoint one. One of the physicians who executed the hospitalization certificate shall be a witness. If the judge concludes that the patient meets the criteria for involuntary hospitalization, the judge shall order the patient to be transferred to a treatment facility or, if he is at a treatment facility, that he be retained there. The judge may adjudicate a person incompetent pursuant to the provisions of this part at the hearing on hospitalization. The treatment facility may retain a patient admitted involuntarily for a period not to exceed six months. If further hospitalization is necessary at the end of that period, the administrator shall apply to the hearing examiner for an order authorizing continued hospitalization.

(4) PROCEDURE FOR CONTINUED HOSPITALIZATION; HEARING EXAMINER.—

(a) If continued hospitalization of a patient is necessary, the administrator shall, prior to the expiration of the period during which the treatment facility is authorized to retain the patient, request an order authorizing continued hospitalization, accompanied by a statement from the patient's physician justifying the request. Notification of this request for retention shall be mailed to the patient and his guardian or representatives along with a completed petition, requiring only a signature, for a hearing regarding the continued hospitalization.

(b) If the petition for the hearing is not returned within fifteen days, the hearing examiner shall sign the order for continued hospitalization. The treatment facility shall be authorized to retain the patient for a period not to exceed one year. The same procedure shall be repeated prior to the expiration of each additional one year period the patient is retained.

(c) If the patient or his guardian or representative returns the signed petition, the hearing examiner shall set a time and place for the hearing to be held within ten days of the time he receives the petition. A continuance may be granted at the discretion of the hearing examiner. The patient and his guardian or representative shall be informed of the right to counsel by the hearing examiner, and if the patient cannot afford an attorney one shall be appointed by the court in which involuntary hospitalization proceedings were initiated.

(d) If continued hospitalization is necessary for an individual admitted while serving a criminal sentence, but whose sentence is about to expire, or for an individual hospitalized while a minor, but who is about to reach the age of twenty-one, the administrator shall petition the hearing examiner for an order authorizing continued hospitalization.

History.—§9, ch. 71-131.
***Note.**—Effective July 1, 1972.

***394.469 Discharge of patients.**—

(1) POWER TO DISCHARGE.—At any time a patient is found no longer to meet the criteria for involuntary hospitalization, the administrator may:

(a) Discharge the patient, unless the patient is under a criminal charge, in which case he shall be transferred to the custody of the appropriate law enforcement officer;

(b) Transfer the patient to voluntary status at the patient's request; or

(c) Place an improved patient, except a patient under a criminal charge, on convalescent status in the care of a community facility.

(2) NOTICE.—Notice of discharge or transfer of status shall be given to the patient, his guardian or representatives, and, if the patient's hospitalization was by order of a court, the court which entered such order.

(3) CONVALESCENT STATUS; REHOSPITALIZATION.—An improved patient may be placed on convalescent status for a period of up to one year in the care of a community facility when such action is in the best interest of the patient. Notice of the patient's placement on convalescent status shall be given to the patient and his guardian or representatives, to the community facility, and, if the patient's hospitalization was by order of a court, to the court which entered the order. Placement on convalescent status shall include provisions for continuing responsibility by a community facility, including a plan for treatment on an out-patient basis. The administrator of the treatment facility from which the patient is given convalescent status may, at any time during the continuance of such convalescent status, rehospitalize the patient when the condition of the patient requires. An involuntary patient may be rehospitalized for the remainder of his authorized treatment period, and the treatment facility shall have up to one additional month during which to apply for continued hospitalization.

History.—§10, ch. 71-131.
***Note.**—Effective July 1, 1972.

***394.471 Validity of prior hospitalization orders.**—No hospitalization of a mentally ill person, lawful before January 1, 1972, shall be deemed unlawful because of the enactment of this part. The department shall establish reasonable rules and regulations to require the administrator of each treatment facility to apply for an order authorizing continued hospitaliza-

tion of any patient for whom hospitalization is necessary and who was initially hospitalized under an order of a court prior to July 1, 1972. Such prior orders, unless superseded by an order under this part, shall remain valid until July 1, 1973, after which all such orders shall be null and void and of no effect, and every patient retained shall become a voluntary patient unless previously placed on involuntary status pursuant to procedures under this part. Nothing in this part invalidates any order appointing a guardian or determining incompetency.

History.—§11, ch. 71-131.
***Note.**—Effective July 1, 1972.

***394.473 Attorney's fees.**—

(1) In case of indigency of any person for whom an attorney is appointed pursuant to the provisions of this part, the attorney shall be entitled to a reasonable fee to be determined by the county judge and paid from the general fund of the county from which the patient was hospitalized. In case of indigency of any such person, the court may appoint a public defender. The public defender shall receive no additional compensation other than that usually paid his office.

(2) When any person who previously retained an attorney is adjudged incompetent, the guardian of such incompetent shall be required to pay a reasonable fee to such attorney retained by the incompetent.

History.—§13, ch. 71-131.
***Note.**—Effective July 1, 1972.

***394.475 Acceptance, examination, and involuntary hospitalization of Florida residents from out-of-state mental health authorities.**—

(1) Upon request of the state mental health authorities of another state, the division is authorized to accept as patients, for a period of not more than fifteen days, persons who are and have been bona fide residents of Florida for a period of not less than one year.

(2) Any person received pursuant to subsection (1) shall be examined by the staff of the state hospital where such patient has been accepted which examination shall be completed during the said fifteen day period.

(3) If upon examination such a person requires continued hospitalization, a petition for a hearing regarding involuntary hospitalization shall be filed with the county judge of the county wherein the treatment facility receiving the patient is located or the county where the patient is a resident.

(4) During the pendency of the examination period herein provided for and the pendency of the involuntary hospitalization proceedings herein provided for, such person may continue to be detained by the treatment facility unless the county judge having jurisdiction enters his order to the contrary.

History.—§14, ch. 71-131.
***Note.**—Effective July 1, 1972.

***394.477 Residence requirements.**—No person shall be hospitalized in a treatment facility under the provisions of this part who has not been a bona fide resident of the state continuously for one year immediately preceding his hospitalization. However, any person not a bona fide resident of the state may be hospitalized in a treatment facility pending transfer of said person back to the state of his residence. An indigent nonresident patient shall be transferred to the state of his residence at the expense of the county from which he was hospitalized. The treatment facility, with the approval of the department, shall retain any nonresident who cannot be transferred subject to the provisions of this part.

History.—§15, ch. 71-131.
***Note.**—Effective July 1, 1972.

PART II

INTERSTATE COMPACT ON MENTAL HEALTH

394.479 Interstate compact on mental health.
394.480 Compact administrator.
394.481 Supplemental agreements with other states.
394.482 Payment of financial obligations imposed by compact.
394.483 Authorized actions by administrator.
394.484 Transmission of copies of act adopting compact.

***394.479 Interstate compact on mental health.**—The Interstate Compact on Mental Health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON MENTAL HEALTH

The contracting states solemnly agree that:

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the

purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the

same standards of visitation, examination, care, and treatment that it employs for similar local patients.

ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to

promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History.—§1, ch. 71-219.
***Note.**—Effective January 1, 1972.

***394.480 Compact administrator.**—Pursuant to said compact, the secretary of health and rehabilitative services shall be the compact administrator who, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact of any supplementary agreement or agreements entered into by this state thereunder.

History.—§2, ch. 71-219.
***Note.**—Effective January 1, 1972.

***394.481 Supplemental agreements with other states.**—The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

History.—§3, ch. 71-219.
***Note.**—Effective January 1, 1972.

***394.482 Payment of financial obligations imposed by compact.**—The compact administrator, subject to the approval of the comptroller, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

History.—§4, ch. 71-219.
***Note.**—Effective January 1, 1972.

***394.483 Authorized actions by administrator.**—The compact administrator is hereby directed to consult with the immediate family representatives or guardian of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to take no final action without approval of the committing court, if any.

History.—§5, ch. 71-219.
***Note.**—Effective January 1, 1972.

***394.484 Transmission of copies of act adopting compact.**—Copies of this act shall upon its approval be transmitted by the department of state to the governor of each state, the attorney general and the Administrator of General Services of the United States, and the Council of State Governments.

History.—§6, ch. 71-219.
***Note.**—Effective January 1, 1972.

PART III

CHILDREN'S PSYCHIATRIC CENTERS

394.50 Children's division established.
394.51 Employment of director of children's division, physicians and persons necessary.
394.52 Powers and duties of director and other employees.
394.53 Compensation of director and employees.
394.54 Bond may be required of any employees.
394.55 Removal of employees.
394.56 Admission to center voluntary; procedure; etc.
394.57 Admissions, involuntary, procedure, etc.
394.58 Records.
394.59 Payment for care of certified children.
394.60 Transfer of patients.
394.61 Discharge.
394.62 Age limit.

394.50 Children's division established.—There is established in this state a children's psychiatric center with an initial capacity of not less than forty-eight beds, to be located on the grounds of the south Florida state hospital in Broward county, and such other locations as may hereafter be designated by law. Said children's center shall be known as the children's division of the south Florida state hospital and shall be a part of the south Florida state hospital. Said center shall be under the supervision of the division of mental health.

History.—§1, ch. 59-383; §§19, 35, ch. 69-106.

394.51 Employment of director of children's division, physicians and persons necessary.—The superintendent of the south Florida state hospital shall employ a director of the children's division subject to the approval of the division of mental health. The director of the children's division shall employ such physicians and clinical personnel necessary for the proper management of the center subject to the approval of the superintendent of the south Florida hospital.

History.—§2, ch. 59-383; §§19, 35, ch. 69-106.

394.52 Powers and duties of director and other employees.—The superintendent of the south Florida state hospital shall prescribe the powers and duties of the director and all other employees, subject to approval of the division of mental health.

History.—§3, ch. 59-383; §§19, 35, ch. 69-106.

394.53 Compensation of director and employees.—The compensation of such director and all other employees shall be prescribed by the superintendent of the south Florida state hospital and subject to the approval of the division of mental health.

History.—§4, ch. 59-383; §§19, 35, ch. 69-106.

394.54 Bond may be required of any employees.—The division of mental health may require bond and sureties of any employee including the director, conditioned as said division may prescribe.

History.—§5, ch. 59-383; §§19, 35, ch. 69-106.

394.55 Removal of employees.—The director shall be removable for good cause by the superintendent of the south Florida state hospital with the approval of the division of mental health. Other employees shall be removed at the pleasure of the director of the children's division subject to approval of the superintendent of the south Florida state hospital.

History.—§6, ch. 59-383; §§19, 35, ch. 69-106.

394.56 Admission to center voluntary; procedure; etc.—

(1) Application for admission, on forms prescribed by the division of mental health, shall be made to the division of mental health or its designated authority. However, every application shall be signed by the parent or legal guardian of the applicant or, in absence of such, the person or agency having custody of said applicant, and the application shall be accompanied by a certificate of at least one licensed physician of good professional standing and licensed to practice under the provisions of chapter 458 or chapter 459, and shall state that the applicant has been examined by said physician and it is the opinion of said physician that the applicant is severely emotionally disturbed or psychotic and is in need of, and will benefit from, intensive care and treatment at the children's center. Said certificate shall also contain a diagnosis and history of the applicant's condition. The certificate shall be based on an examination conducted not less than fifteen days prior to the date of the application.

(2) Upon receipt of the application the division of mental health or its designated authority shall, on the basis of the certificate of examination, reject or accept the applicant as a patient at the center. If the application is accepted, the applicant shall be admitted to the center as space and facilities shall become available. The division of mental health or its designated authority shall have the sole discretion of determining the order of admissions of applicants based on the type of case, the urgency, and facilities available. Provided, however, the ability to pay shall never be a prerequisite to admissions or care and treatment at the center.

(3) Any child admitted to the center under this section whose parent or legal guardian requests his release in writing shall be forthwith released except that if a majority of the medical staff of the center is of the opinion that the release of the child would be unsafe for the child or others, the superintendent may file a petition in the office of the county judge of the county where the patient is situate re-

questing the certification of said child to the center pursuant to the procedure set forth in this law, and said petition shall be so filed within the next succeeding business day after the request for release is made. Upon filing said petition the patient's release shall be determined by final order of said court.

History.—§7, ch. 59-383; §§19, 35, ch. 69-106; §4, ch. 70-432; §1, ch. 70-439.

394.57 Admissions, involuntary, procedure, etc.—

(1) PETITION.—Whenever any child in this state is believed to be severely emotionally disturbed or psychotic, a written petition under oath may be made to the county judge of the county wherein said child resides or may be found for judicial inquiry into the mental condition of the child. Every petition so filed shall be accompanied by a report of at least one qualified physician of good professional standing and licensed to practice under the provisions of chapter 458 or chapter 459, stating that the child named in the petition has been examined by said physician, and said report shall contain the results of the examination, a diagnosis and history of the child's mental and physical condition, and a statement of belief that the child would benefit from intensive care and treatment at the children's division of the south Florida state hospital.

(2) WHO MAY FILE PETITION.—The petition may be filed by: the mother, father or legal guardian of the said child; any three citizens of the state who are acquainted with the child, provided one such citizen shall be a qualified physician who has examined the mental condition of the child named in the petition.

(3) NECESSARY ALLEGATIONS.—Every petition shall allege the name, approximate age, address, and nature of the disability of the alleged mentally ill child. It shall also allege the names and addresses of his parents or legal guardian, if such be known, and shall pray for an order certifying said child for admission to the children's division of the south Florida hospital.

(4) NOTICE, HEARING.—Whenever a petition is filed the county judge shall set an immediate or very early hearing on the petition. Reasonable notice shall be given in writing to the petitioner and to one or more of the parents or legal guardian, if such be known. of the child named in said petition, notifying them that said hearing will be held at the time and place specified in said notice. All hearings shall be conducted in an informal manner, as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the child. The court will receive all relevant evidence and the child and his parents or legal guardian shall have an opportunity to be represented by counsel and if no counsel is provided the court may appoint counsel.

(5) EXAMINATION.—The parents or legal guardian at any time before the hearing or the judge may request further examination of the alleged severely emotionally disturbed or psychotic child and if such request is made the judge shall appoint an examining committee composed of two practicing physicians of good professional standing, each of whom shall be a graduate of a school of medicine recognized by the American medical association. Within a reasonable time after their appointment the committee shall examine the child named in the petition and upon the completion of said examination forthwith file a written report of said examination. Said report shall contain the results of the examination, a diagnosis and history of the child's mental and physical condition and a statement as to whether or not the committee believes said child will benefit from intensive care and treatment at the children's division.

(6) CERTIFICATION.—On the basis of the petition and original examination report and examining committee's report, if any, and such other evidence and testimony as may be presented, the judge shall determine whether or not the child named in the petition is severely emotionally disturbed or psychotic and will benefit from intensive care and treatment at the children's division. If the judge finds the child is severely emotionally disturbed or psychotic and will benefit from intensive care and treatment at the center, he shall certify the child for admission to the center; provided, however, no child shall be admitted to the center without the consent of the director of the children's division; if he finds said child is not severely emotionally disturbed or psychotic and will not benefit from intensive care and treatment at the center, said judge may dismiss the cause or make such other order as he may deem in the best interest of said child.

History.—§8, ch. 59-383; §5, ch. 70-432.

394.58 Records.—The order of certification shall be forwarded to the division of mental health or its designated authority, together with a copy of all medical examinations.

History.—§9, ch. 59-383; §§19, 35, ch. 69-106.

394.59 Payment for care of certified children.—Whenever the parent, guardian or estate of the child is able to do so, the cost of care and maintenance in whole or in part shall be borne by said parent, guardian or estate; the amount and payment thereof to be determined and arranged by the division of mental health from time to time as conditions and circumstances may warrant. All payments hereunder shall be made to the superintendent and remitted by him to the state treasurer at stated intervals and deposited to general revenue fund. The expenses of certification and transportation to and from and admission to the center shall be borne by the county from which the child is admitted, except in cases of paying children in which case such expenses shall be borne by the parent, guardian or estate of said child. Whether

or not a child is admitted to the center on a paying basis shall in no way influence the treatment of said child; every child at the center is to be treated solely on his merits and according to his mental and physical condition.

History.—§10, ch. 59-383; §§19, 35, ch. 69-106.

394.60 Transfer of patients.—When it is made to appear to the division of mental health that any child at the center is not responding to or benefiting from the intensive care and treatment at the center and that such child is in need of further care and treatment and would be more suitably treated and cared for at one of the Florida state hospitals or sunland training center, said division of mental health may order such child transferred from the center to sunland training center or to one of the state hospitals, as the case may be, and thereupon said child shall be received and treated and cared for in Florida state hospital or sunland training center, as the case may be. Provided, however, all transfers to sunland training center shall first be approved by the division of retardation of the department.

History.—§11, ch. 59-383; §§19, 35, ch. 69-106.

394.61 Discharge.—

(1) When a child has been a patient at the center and there subject to care and treatment, if the director upon advice of his medical staff is of the opinion that said child is cured or sufficiently improved or for other reasons will no longer benefit from care and treatment at the center, the director may issue a certificate of discharge and discharge said child from the center. The original of said certificate shall be forwarded to the county judge who originally certified said child and copy shall be sent by registered or certified mail to the parent or guardian of the child. Upon the filing and docketing said certificate, the case shall be terminated. In the event the parent or legal guardian cannot be found or refuses to accept custody of said discharged child, the child shall be placed in the care and custody of the juvenile court of the county from which the child was originally admitted, as a dependent child.

(2) In addition to the discharge procedure contained in subsection (1), the division of mental health, together with the superintendent of the south Florida state hospital, may make such rules and regulations as they deem necessary to provide for the trial visits or vacation leaves of patients at the center who are not sufficiently improved to be discharged from the center.

History.—§12, ch. 59-383; §§19, 35, ch. 69-106.

394.62 Age limit.—Any child between the ages of five to fourteen years, inclusive, is eligible for admission to the children's center as provided in Part III of this chapter.

History.—§13, ch. 59-383.

PART IV

COMMUNITY MENTAL HEALTH SERVICES

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394.65 Short title.—This part IV of this chapter shall be known as "the community mental health act."

History.—§1, ch. 70-109.

394.66 Legislative intent.—It is the intent of the legislature to:

(1) Organize and finance community mental health services in local communities throughout the state through locally administered and locally controlled community mental health programs;

(2) Better utilize existing resources at both the state and local levels in order to improve the effectiveness of necessary mental health services;

(3) Integrate state-operated and community mental health programs into a unified mental health system;

(4) Insure that all mental health professions are appropriately utilized in such mental health programs to provide a means for participation by local governments in the determination of the need for, and the allocation of, mental health resources;

(5) Establish a uniform ratio of state government responsibility and local participation in financing mental health services; and

(6) Provide a means of allocating state mental health funds according to community needs.

History.—§2, ch. 70-109.

394.67 Definitions.—When used in this part, unless the context clearly requires otherwise:

(1) "Service district" means a community service district as established by the department for the purpose of providing community mental health services.

(2) "Governing body" means the chief legislative body of a county; a board of county commissioners or boards of county commissioners in counties acting jointly.

(3) "District plan" or "plan" means the mental health plan adopted by a mental health board in accordance with this part.

(4) "Department" means the department of health and rehabilitative services.

(5) "Division" means the division of mental health of the department of health and rehabilitative services.

(6) "Advisory council" means the advisory council on mental health as created by §402.11.

(7) "Patient fees" means compensation received by a community mental health facility for services rendered to clients from any source of funds, including city, county, state, federal, and private sources.

(8) "Local matching funds" means funds received from governing bodies of local government, including city commissions, county commissions, district school boards, special tax districts, private hospital funds, private gifts, both individual and corporate, and bequests and funds received from community drives or any other sources.

(9) "Federal funds" means funds received by a community from federal sources for mental health facilities and programs.

(10) "Mental health board" or "board" means the board within a board district established in accordance with provisions of this part for the purposes of administering a community mental health program.

(11) "Board district" means that area over which a single mental health board has jurisdiction for administering mental health programs as provided in this part. It may consist of one or more service districts, in accordance with the provisions of this part.

History.—§3, ch. 70-109.

394.68 Service districts established.—The division shall establish service districts to designate the geographical areas within which community mental health programs provided for in this part shall be conducted. Wherever feasible, the service districts shall conform to the boundaries of the "catchment areas," as defined and designated in the most recent state plan of the division.

History.—§4, ch. 70-109.

394.69 District mental health boards.—Mental health boards shall be established as hereinafter provided to administer board districts of the following types:

(1) TYPE A.—Where a service district extends throughout one county, there shall be one board district.

(2) TYPE B.—Where two or more service districts are contained within one county, there shall be one board district for the entire county.

(3) TYPE C.—Where two or more counties comprise one service district, there shall be one board district for the entire district.

(4) TYPE D.—Where portions of one county are joined with one or more counties to form one or more service districts, there shall be one board district.

History.—§5, ch. 70-109.

394.70 Method of appointment of mental health boards.—

(1) The mental health board shall be appointed by the governing body or bodies having jurisdiction in the board district. In its selection and appointment of the board, the governing body shall adhere to the following:

(a) First priority shall be given to an existing nonprofit corporation with a demonstrated commitment to the mental health of the general public and which petitions the governing body or bodies to be appointed as the mental health board; provided however that such corporation agrees to comply with the provisions of §394.75 within six months from the date of its appointment; and provided that if a county government has an existing local governmental structure dealing primarily with mental health such agency may be designated the mental health board under this part. If more than one such corporation within the board district petitions for appointment, the governing body in consultation with and with the concurrence of the division, shall select the board.

(b) Existing nonprofit corporations or other entities may associate together, by joint venture or otherwise, to form a new nonprofit corporation for the purpose of applying to the governing body for recognition as the mental health board. If such occurs the governing body shall give consideration to the newly organized entity in the same manner as to an existing nonprofit corporation under paragraph (a), provided that such new entity is created by April 1, 1971, and applies to the governing body for approval within that time.

(c) At least one member of a local governing body or bodies within the board district shall be a member of the mental health board.

(d) In the event there is no nonprofit corporation which has petitioned the governing body or qualified as the mental health board in accordance with paragraph (a) or (b) by April 1, 1971, the governing body or bodies shall appoint a board consisting of not less than nine or more than fifteen members, who shall be as fairly representative as possible of a broad range of community mental health interests.

(e) The terms of members of the board shall be staggered. Vacancies by resignation or expiration of term shall be filled by the remaining members of the board.

(f) When a person qualifies for membership on the board because he holds a specified office, membership on the board ceases when the term of office ceases. No person shall serve more than two successive terms on the board.

(g) No member of the board shall be a

full-time or part-time employee of the division of mental health or an employee of a community mental health facility.

(2) When more than one governing body exists within the board district, each governing body shall be entitled to that number of appointments to the board as fairly represents its county's proportionate population in the board district.

(3) Board members shall serve without pay, but shall be entitled to travel and per diem expense as authorized by §112.061.

(4) Each board shall designate one of its members to serve as treasurer who, before he assumes office, shall post with the department of state a surety bond in an amount to be set by the department with a surety approved by the department. Such bond shall be conditioned on the faithful discharge of the duties of the office and be made payable to the governor.

History.—§6, ch. 70-109.

394.71 Duties of board.—Subject to the provisions of this part and the regulations of the department, each mental health board:

(1) Shall review and evaluate the mental health needs, services, and facilities of its area of jurisdiction and prepare a district plan and budget based on its evaluation.

(2) Shall receive and disburse such funds as are entrusted to it by law or otherwise, including funds from both private and public sources, charitable foundations, and agencies of the federal government.

(3) Shall contract for state funds as provided in this part.

(4) Shall report to the governing body as to a program of community mental health services and facilities and submit an annual report to the governing body.

(5) May appoint a director of mental health for the board district.

History.—§7, ch. 70-109.

394.72 Qualifications of local director.—The local director appointed by the board shall meet such standards of training and experience as the division shall require by regulation. Applicants for such positions need not be residents of the city, county, or state and may be employed on a full-time or part-time basis. If a board is unable to secure the services of a person who meets the standards of the division, the board may select an alternate administrator, subject to the approval of the division.

History.—§8, ch. 70-109; §1, ch. 70-439.

394.73 Joint mental health programs in two or more counties.—

(1) Subject to rules and regulations established by the department, any county within a board district shall have the same power to contract for mental health services as does the division under existing statutes.

(2) In order to carry out the intent of this part and to provide mental health services in accordance with the district plan, the counties within a board district may enter into agreements with each other for the establishment of joint mental health programs. The agreements may provide for the joint provision or operation of services and facilities or for the provision or operation of services and facilities by one participating county under contract with other participating counties.

(3) When a board district comprises two or more counties or portions thereof, it shall be the obligation of the mental health board to submit to the governing bodies, prior to the budget submission date of each governing body, an estimate of the proportionate share of costs of mental health services proposed to be borne by each such governing body.

(4) Any county desiring to withdraw from a joint program may submit to the board and to the division a resolution requesting withdrawal therefrom together with a plan for the equitable adjustment and division of the assets, property, debts, and obligations, if any, of the joint program. Unless all participating counties agree to an earlier withdrawal, no county participating in a joint program may withdraw therefrom without the consent of the division or earlier than two years after submission of the withdrawal resolution to the director.

History.—§9, ch. 70-109; §1, ch. 70-439.

394.74 Contracts for services.—

(1) Each mental health board, with the approval and subject to regulations of the department, and when funds are available for such purposes, is authorized to contract for state funds on a matching basis in the establishment and operation of local mental health programs with any hospital, clinic, laboratory, institution, or other appropriate service agency. Any such contract may be entered into notwithstanding that a local director of the mental health program is a member of the medical or consultant staff of such hospital, clinic, laboratory, institution, or other appropriate service agency.

(2) Contracts shall include, but not be limited to, the following:

(a) A provision that all programs must be available to the residents of the service district without regard to race, creed, color, national origin, age, sex, or ability to pay.

(b) Evidence of the availability of local matching funds.

(c) A requirement that the plan and budget of the board must conform to the division regulations and the priorities established thereunder.

(3) Nothing in this part shall prevent any city or combination of cities from owning, financing, and operating a mental health program by entering into arrangements with the board to provide and be reimbursed for services provided as part of the district plan.

History.—§10, ch. 70-109.

394.75 The board district plan.—

(1) No later than October 1 of each year

the board shall adopt and submit to the division, in the form and according to procedures prescribed by it, an annual district plan which provides for mental health services within the board district during the next state fiscal year.

(2) The plan shall:

(a) Describe the proposed objectives and programs.

(b) Set forth:

1. The sources of local matching funds.

2. Priorities for the services included in the plan for the next fiscal year.

(c) Provide:

1. The basis for reimbursement pursuant to the provisions of this part.

2. A plan for the coordination of services in such manner as to insure effectiveness and avoid duplication, fragmentation of services, and unnecessary expenditures.

3. For the most appropriate and economical use of all existing public and private agencies and personnel.

4. For the fullest possible and most appropriate participation by existing programs, state hospitals and clinics, public and private general and psychiatric hospitals, city, county, and state health and family service agencies, drug abuse and alcoholism programs, probation departments, physicians, psychologists, social workers, public health nurses, and all other public and private agencies and personnel which are required to, or may agree to, participate in the plan.

5. An inventory of all public and private mental health resources within the board district.

(d) Specify all other mental health services in addition to those included under the provisions of this part which the board district wishes to continue to operate in the next fiscal year and the estimated costs of such services.

(e) Include:

1. Provisions for evaluating mental health services in the board district. Program evaluations shall include studies of progress toward attainment of objectives, relative cost and effectiveness of alternative comparable forms and patterns of services.

2. A projection of board district needs for mental health services for the succeeding six year period. The plan shall provide for the orderly and economical development of those services and shall indicate priorities and anticipated expenditures and revenues.

(3) The plan may include, but not be limited to, the establishment of any of the following services:

(a) Inpatient services;

(b) Outpatient services;

(c) Partial hospitalization services, such as day care, night care, or weekend care;

(d) Emergency services twenty-four hours per day available within one of the three services listed in paragraphs (a), (b), and (c);

(e) Consultation and education services available to community agencies and professional personnel and information services to the general public;

(f) Diagnostic services, including screening of persons referred for admission to state hospitals.

(g) Rehabilitative services, including vocational and educational programs;

(h) Precare and aftercare services in the community, including foster home placement, home visiting, and halfway houses;

(i) Training; and

(j) Research and evaluation.

(4) In developing the plan, optimum use shall be made of federal, state, and local funds which may be available for mental health planning.

(5) All departments of state government and all local public agencies shall cooperate with officials to assist them in mental health planning. The division of mental health shall, upon request and availability of staff, provide consultative services to the local mental health directors, governing bodies, and mental health boards.

History.—§11, ch. 70-109; §1, ch. 70-439.

394.76 Financial provisions.—

(1) If, after review, the division approves the district plan, it shall determine the amount of state funds available for each district for specific services under the approved county plan from the funds appropriated for mental health services.

(2) When allocating funds for each district the division shall use the following priorities:

(a) Plans shall be funded to continue all existing approved services in accordance with other provisions of this part.

(b) Plans shall be funded to expand existing programs or to establish new programs as determined by the district plans within the limits of available funds.

(3) If in any fiscal year the approved appropriation is insufficient to finance the programs and services specified by this part, the division shall have the authority to determine the amount of state funds available to each board district for such purposes in accordance with the priorities in both the state and district plans.

(4) The state's share of financial participation shall be determined by the following formula:

(a) In the first year of funding, the state's share shall be 50 percent of the total state approved reimbursable operating cost of services and programs as specified in §394.75(3), less contributions from federal sources, inpatient fees, and one half of all other patient fees collected.

(b) During each succeeding year, the state's share of financial participation shall be increased by 5 percent each year to a maximum level of 65 percent state participation.

(c) All community mental health facilities which on January 1, 1971 are receiving federal

funds under Public Law 89-105 as amended shall be funded by the state according to the following formula:

1. If the facility is in the first year of federal funding, the state's share shall be 50 percent.

2. If the facility is in the second year of federal funding, the state's share shall be 55 percent.

3. If the facility is in the third year of federal funding, the state's share shall be 60 percent.

4. If the facility is in the fourth or subsequent year of federal funding, the state's share shall be 65 percent.

(d) In order to be qualified for receipt of any state matching funds, there must be in existence within the board district applying for such funds those services described in §394.75(3)(a)-(f). However, the division may waive this requirement if it is satisfied, based on a plan submitted by the board, that the minimum programs will be provided within a period of time not to exceed five years. Upon application, the department may also allow a board to provide, or contract for the providing of, diagnostic services only, identified in §394.75(3)(f), plus one other service in §394.75(3)(a)-(e) upon a showing that such services are needed within the district and that establishment of the other required services would be impractical.

(5) The division is authorized to make investigations and to require audits of expenditures.

(6) Claims for state reimbursement shall be made in such form and in such manner as the division shall determine.

(7) Expenditures subject to state reimbursement shall include expenditures for approved salaries of personnel; approved facilities and services provided through contract; operation, maintenance, and service costs; depreciation of facilities; and such other expenditures as may be approved by the division. They shall not include expenditures for initial capital improvements; the purchase or construction of buildings, except for such equipment items and remodeling expense as may be provided for in regulations of the division; compensation to members of a community mental health board, except actual and necessary expenses incurred in the performance of official duties; or expenditures for a purpose for which state reimbursement is claimed under any other provision of law.

History.—§12, ch. 70-109; §1, ch. 70-439; §111, ch. 71-355.

394.77 Control of costs.—Each board district shall furnish the division with such information as it shall require to enable it to establish and maintain an accounting system of the costs of mental health services in the board district which are funded in whole or in part by state funds. Each board district shall maintain records containing such information in the form the division requires for the purposes of this part.

History.—§13, ch. 70-109; §1, ch. 70-439.

394.78 Operation and administration.—

(1) The division of mental health under the department of health and rehabilitative services shall administer this part and shall adopt rules and regulations necessary for its administration.

(2)(a) The division shall by regulation establish standards of education and experience for professional and technical personnel employed in mental health programs.

(b) Rules and regulations of the division shall be adopted in accordance with the administrative procedure act under chapter 120.

(3) The division shall review each district plan to determine that:

(a) It complies with the state plan, the requirements of this part, and the standards adopted under this part;

(b) The most effective and economical use will be made of available public and private mental health resources in the board district;

(c) The six year plan for community mental health services has been adequately prepared, giving careful consideration to the most effective and economical alternative forms and patterns of services;

(d) Adequate provisions have been made for review and evaluation of the services provided in the county.

(4) The division shall require modifications in the district plan which it deems necessary to bring the plan into conformance with the provisions of this part.

History.—§14, ch. 70-109; §1, ch. 70-439.

394.79 State plan.—

(1) The division shall prepare a state plan which shall be in conformity with federal requirements. The state plan shall be annually revised, shall consider the community mental health needs set forth in the district plans, and shall include a system of priorities for allocating state mental health funds to the board district.

(2) The division shall consult with the local mental health directors and the advisory council in developing the state plan.

(3) The state plan shall be reviewed and revised as necessary to provide a basis for allocating mental health funds throughout the state. The state plan and the system of priorities shall encourage innovations by community mental health programs.

History.—§15, ch. 70-109; §1, ch. 70-439.

394.80 Authorization to appropriate funds.—The several cities and counties of this state are authorized to appropriate funds to support all or any portion of the cost of services and construction not met through support by the state or federal governments.

History.—§16, ch. 70-109.

394.81 Current state financial aid con-

tinued.—The division shall continue to provide financial aid to all programs and facilities which are receiving state aid on January 1, 1971, if:

(1) The board district within which the program or facility is located provides the minimum required services, as defined in §394.75(3)(a)-(f); or

(2) The division is satisfied that such services will be provided within a period of five years, or is satisfied that the other provisions of §394.76(4)(d), are applicable; and

(3) There is no decrease in local funds and local financial participation in the program.

History.—§17, ch. 70-109; §1, ch. 70-439.

CHAPTER 396
CONTROL OF ALCOHOLISM

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396.012 Short title.—This chapter shall be known and cited as the "Comprehensive Alcoholism Prevention, Control, and Treatment Act."

History.—§1, ch. 71-132.

396.022 Findings and declaration of purposes.—

(1) Alcohol abuse and alcoholism are increasing throughout the country and in Florida. Alcohol abuse can seriously impair health and lead to chronic and habitual alcoholism. Alcoholism is recognized as an illness or disease that requires attention and treatment through health and rehabilitative services.

(2) Alcoholism prevention, treatment, and control programs should, whenever possible, be community based; provide a comprehensive range of services, including emergency treatment, under proper medical auspices on a coordinated basis; and be integrated with, and involve, the active participation of a wide range of public and nongovernmental agencies, especially community mental health programs.

(3) Existing laws have not been adequate to prevent alcohol abuse or to provide sufficient education, treatment, and rehabilitation services for the alcoholic. Increasing education, treatment, and rehabilitation services and closer coordination of efforts offer the best possibility of reducing alcohol abuse and alcoholism. A major commitment of health and social resources is required to institute an adequate and effective state program for the prevention and treatment of alcohol abuse and alcoholism.

(4) The criminal law is not an appropriate device for preventing or controlling health problems. Dealing with public inebriates as criminals has proved expensive, unproductive, burdensome, and futile. The recognition of this fact and the concurrent establishment of modern public health programs for the medical management of alcohol abuse and alcoholism will facilitate early detection and prevention of alcoholism and effective treatment and rehabilitation of alcoholics and early diagnosis and treatment of other concurrent diseases.

(5) Handling alcohol abusers and alcoholics primarily through health and other rehabilitative programs relieves the police, courts, correctional institutions, and other law enforcement agencies of a burden that interferes with their ability to protect citizens, apprehend law violators, and maintain safe and orderly streets.

(6) Voluntary treatment for alcoholism is more appropriate than involuntary treatment. Civil commitment should be used only where an alcoholic is in immediate danger of serious harm or if he presents a substantial danger to other persons.

(7) There is a need to establish and maintain a comprehensive program for the control of drunkenness and the prevention and treatment of alcoholism throughout Florida.

(8) An alcoholic, except in specified instances enumerated herein, shall be treated as a sick person and provided adequate and appropriate medical, psychiatric, and other humane rehabilitative treatment services for his illness. All public officials in the state shall take cognizance of this legislative policy and this chapter shall be construed in a manner consistent therewith.

History.—§2, ch. 71-132.

396.032 Definitions.—For the purposes of this chapter:

(1) "Department" means the department of health and rehabilitative services.

(2) "Division" means the division of mental health of the department of health and rehabilitative services.

(3) "Director" means director of the division of mental health.

(4) "Secretary" means the secretary of health and rehabilitative services.

(5) "Bureau" means the bureau of alcoholic rehabilitation of the division of mental health.

(6) "Treatment and research center" means any center or facility maintained and operated by the state which conducts treatment and rehabilitative programs and services for alcoholics.

(7) "Treatment resource" means any public or private facility, service, or program providing treatment or rehabilitation services for alco-

holics, including, but not limited to, detoxification centers, licensed hospitals, community mental health centers, clinics or programs, halfway houses, and rehabilitation centers.

(8) "Alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that it injures his health or substantially interferes with his social or economic functioning, or to the extent that he has lost the power of self-control with respect to the use of such beverages.

(9) "Peace officer" means any state, county, or municipal public safety officer, including policemen, sheriffs, deputy sheriffs, members of any county public safety department, members of the highway patrol, constables, or any other public safety officers having the power of arrest.

(10) "Physician" means a doctor of medicine or a doctor of osteopathic medicine, and shall include, unless otherwise specified herein, an intern or resident enrolled in an intern or resident training program affiliated with an approved medical school, hospital, or other facility through which such programs are normally conducted.

History.—§3, ch. 71-132.

396.042 Duties and functions of the division.—

(1) It shall be the duty of the division to formulate and effect a plan for the prevention, care, treatment, and rehabilitation of alcoholics.

(2) In formulating and effecting the plan defined in subsection (1), the division shall:

(a) Furnish such aid to alcoholics in any manner which, in its judgment, will afford the greatest benefit to said alcoholics, and shall have the power in this connection to make suitable arrangements with hospitals or clinics which in its discretion shall be deemed advisable to afford proper treatment, care, or rehabilitation of alcoholics.

(b) Provide services through existing mental health centers, clinics, and other appropriate treatment resources.

(c) Carry on educational and informational programs on alcoholism for the benefit of the general public, alcoholics, professional persons, or others who care for or may be engaged in the care and treatment of alcoholics.

(d) Cooperate with physicians and treatment resources in making arrangements for the treatment and care of indigent alcoholics, and may arrange for payment for hospital care on a cost basis for such indigent alcoholics.

(e) Formulate, undertake, and carry out a research and evaluation program on alcoholism; participate in, cooperate with, and assist, as in its discretion shall be deemed advisable, other properly qualified agencies, including any agency of the federal government, schools of medicine, and hospitals or clinics, in planning and conducting research on the prevention, care, treatment and rehabilitation of alcoholics.

(f) Serve as a clearing house for information relating to alcoholism.

(g) Develop, encourage, and foster statewide, regional, and local plans and programs in the field of alcoholism, which, whenever possible, will be carried out through the services and programs provided under the community mental health act, part IV of chapter 394.

(h) Review, comment upon, and assist public agencies and local governments with applications for grants or other funds for services for alcoholics to be submitted to the federal government.

(i) Prepare, or advise the governor in the preparation of, a comprehensive alcoholism plan for inclusion in the comprehensive health plan to be submitted for federal funding pursuant to the Comprehensive Health Planning and Public Health Services Amendments of 1966, Public Law 91-616, and other bills providing for federal funding and support.

(j) Enlist the assistance of public and voluntary health, education, welfare, and rehabilitation agencies in a concerted effort to prevent and to treat alcoholism; and

(k) Encourage alcoholism rehabilitation programs in businesses and industries in the state.

History.—§4, ch. 71-132.

396.052 Treatment and rehabilitation program.—

(1) The division shall employ a variety of treatment methods and shall provide or arrange for a variety of treatment facilities in order that the needs of persons afflicted with alcoholism and of persons who are intoxicated and in need of emergency medical and other care may be fully and expeditiously met. To the fullest extent possible the division shall utilize the facilities, and coordinate its programs with the programs, of community mental health centers presently existing or hereafter to be established. Treatment services and facilities shall include but need not be limited to the following:

(a) Emergency medical-social services and facilities. Facilities and services to render emergency medical care, including detoxification, and emergency social services shall be open twenty-four hours every day, and shall be located conveniently near population centers so as to be quickly and easily accessible to patients. Such facilities and services shall provide for the immediate physical and social needs, including the needs for medication and shelter of intoxicated persons, and shall also provide for initial examination, diagnosis, and referral. Each such facility or service shall be affiliated with, or constitute a part of, the general medical service of a licensed hospital or other medical facility, but need not be physically a part of such hospital or facility.

(b) Outpatient facilities, including, but not limited to, clinics, vocational rehabilitation services and community mental health centers.

(c) Intermediate care services, including, but not limited to, partial hospitalization and supportive residential facilities, such as community mental health centers, foster home placement, hostels and halfway houses. The intermediate care facilities may be operated by, or may be jointly operated with, state or local, public or private, agencies approved by the department.

(d) Inpatient short term or extended care facilities for diagnostic study, intensive study, treatment, and rehabilitation of alcoholics. The facilities may be part of licensed hospitals, mental hospitals, or community mental health centers, and may be provided to inmates of any correctional facility. The Florida alcoholism treatment and research center at Avon Park in Highlands County, created under former chapter 396, shall continue as a treatment, training, and research center operated by the bureau.

(2) The division, subject to applicable provision of law, may arrange for the use of local and private treatment facilities on a cooperative basis, by contractual, cost-sharing, or other method of joint or shared support, whenever the director, subject to the policies of the department, considers this to be the most effective and economical course to follow. Authority is granted to the division to accept, receive, administer, and expend any moneys or materials, gifts, or grants from whatever source and to contract for services with, or make grants to, any governmental units, agencies, or departments, federal, state, or local, and any treatment resource having available approved treatment, rehabilitation, or educational services relating to alcoholism.

History.—§5, ch. 71-132.

396.062 Acceptance for treatment; regulations.—The division, through the bureau, shall adopt, amend, promulgate, and enforce such rules and regulations as may be deemed necessary to carry out the purposes of this chapter. In establishing such rules and regulations the division shall be guided by the following standards:

(1) A patient shall be initially assigned to, or transferred to, outpatient or intermediate rather than inpatient care, unless he is found to require inpatient care for medical reasons, or unless he is found to be likely to inflict physical harm on himself or others if not admitted.

(2) Whenever possible, a patient shall be treated on a voluntary, rather than an involuntary, basis.

(3) No person shall be denied treatment solely because he has withdrawn from an inpatient or outpatient facility against medical advice on one or more prior occasions, or because he has relapsed one or more times after earlier treatment.

History.—§6, ch. 71-132.

396.072 Treatment and services for intoxicated persons.—

(1) Any person who is intoxicated in a public place and who appears in need of help, if he consents to the proffered help, may be assisted to his home or to an emergency service or facility, whether public or private, by a peace officer. Any person who is intoxicated in a public place and appears to be incapacitated shall be taken by the peace officer to an emergency service or facility. A person shall be deemed incapacitated when he appears to be in immediate need of emergency medical attention, or when he appears to be unable to make a rational decision about his need for care.

(2) In detaining an intoxicated person and in taking him to a facility or service for emergency care, the peace officer shall proceed whenever possible with the consent of the intoxicated person. If the person appears to be incapacitated and refuses his consent, he may be detained and may be taken for emergency care against his will, but unreasonable force shall not be used.

(3) Any person who is brought to an emergency service or facility shall be examined by a physician as soon as possible. The physician in charge of the emergency service or facility may admit a person as a patient or refer him to another facility for diagnosis or treatment. The emergency service or facility may provide emergency help to a person who is not admitted as a patient.

(4) Any person who at the time of admission to an emergency service or facility is incapacitated shall remain at the service or facility until he is no longer incapacitated, but not longer than ninety-six hours after his admission as a patient. Any person admitted to an emergency service or facility who is not incapacitated at the time of admission, or any person who is no longer incapacitated, may consent to remain at the emergency service or facility for as long as the medical officer believes warranted, but any patient who is not incapacitated shall be free to leave the emergency service or facility at any time.

(5) Any person who is not admitted to an emergency service or facility or who is not referred to another facility and who has no funds may be taken to his home, if he has one.

(6) When a patient is admitted to an emergency service or facility for treatment, his family or next of kin shall be notified as promptly as possible. If a patient who is not incapacitated requests that there be no notification, his request shall be respected.

(7) The peace officer, in detaining an intoxicated person and in taking him to an emergency service or facility, shall be deemed to be taking him into protective custody and shall make every reasonable effort to protect his health and safety. A taking into protective custody under this section shall not be considered an arrest for any purpose, and no entry or other record shall be made to indicate that he

has been arrested or has been charged with a crime.

(8) A peace officer who acts under this section shall be considered as acting in the conduct of his official duty and shall not be held criminally or civilly liable for false arrest or false imprisonment.

(9) If the physician in charge of the emergency service or facility determines that such a course is for the patient's benefit, a patient in an emergency service or facility shall be encouraged to agree to further diagnosis and to voluntary treatment at suitable inpatient, outpatient, or intermediate care facilities.

History.—§7, ch. 71-132.

396.082 Voluntary treatment of alcoholics.—

(1) Any person may voluntarily apply for treatment for alcoholism directly to any treatment resource. If the patient is a minor or an incompetent, the application for voluntary inpatient, intermediate, or outpatient treatment, and the request for discharge from an inpatient institution, shall be made by his parent, legal guardian, or other legal representative.

(2) The administrator in charge of any public inpatient, outpatient, or intermediate facility, subject to the rules and regulations established by the director, may determine who shall be admitted for treatment. Private treatment resources may establish their own admission policies, including provisions for payment for services.

(3) Upon his discharge from, or upon leaving, a public treatment facility, a patient shall be encouraged to consent to appropriate outpatient, intermediate care, or other aftercare treatment. If it appears to the administrator in charge of the treatment facility, upon the advice of the attending physician, that the patient is an alcoholic who requires such help, the division may arrange for assistance in obtaining supportive services and residential facilities, such as maintenance in a hostel or halfway house operated by the department or by any other state or private agency.

History.—§8, ch. 71-132.

396.092 Emergency commitment of alcoholics.—

(1) A person may be admitted to a treatment resource for emergency care and treatment upon application accompanied by the certificate of one licensed physician. The application may be made by any one of the following: the certifying physician, the patient's spouse or guardian, any relative of the patient, or any other responsible person. The application shall state facts to support the need for immediate commitment, including factual allegations showing that the person to be committed has threatened, attempted, or actually inflicted physical harm upon himself or another. The physician's certificate shall state that he has examined the person within two days of the certificate date and shall set out the facts to support the physician's conclusion that the person is an alcoholic who has lost the power of self-control with respect to the use of alcoholic beverages and that unless immediately committed he is likely to inflict physical harm upon himself or others.

(2) The administrator in charge of a treatment resource may refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment. Upon acceptance of the application by the administrator in charge of the facility, the person shall be transported to the facility by a peace officer, health officer, the applicant for commitment, the patient's spouse, or the patient's guardian. The person shall be retained at the facility that admitted him, or be transferred to any other appropriate treatment resource, until discharged pursuant to subsection (3).

(3) The attending physician shall discharge any person committed pursuant to this section when he determines that the grounds for commitment no longer exist, but no person committed pursuant to this section shall be retained in any facility for more than five days. If, however, a petition for involuntary commitment pursuant to §396.102 has been filed within such five days, and if the administrator in charge of a facility finds, upon the advice of the attending physician, that grounds for emergency commitment still exist, he may retain the person until the petition has been heard and determined, but in no event longer than twenty days following the filing of the petition.

History.—§9, ch. 71-132.

***396.102 Involuntary commitment of alcoholics.—**

(1) A person may be committed to an appropriate treatment resource by the county judge's court upon the petition of his spouse or guardian, any next of kin, the certifying physician, the head of any state treatment and research center, the sheriff of the county where such person resides or is found, or any three citizens of the state. The petition shall allege:

(a) That the person is an alcoholic who has lost the power of self-control with respect to the use of alcoholic beverages, and

(b)1. That he has threatened, attempted or actually inflicted physical harm on himself or others, or

2. That he is in need of medical treatment and care and that by reason of chronic alcoholism his judgment has been so impaired that he is incapable of appreciating his need for care and of making a rational decision in regard thereto. A mere refusal to undergo treatment shall not, however, by itself constitute evidence of lack of judgment with respect to the need for care.

The petition shall be accompanied by a certificate of a licensed physician who has examined the person within two days of the submission of

the petition. The certificate shall set forth the physician's findings in support of the allegation of the petition. If the person whose commitment is sought has refused to submit to a medical examination, the fact of such refusal shall be alleged in the petition.

(2) Upon receipt of the petition, the court shall fix a date for a hearing on the issues no later than ten days from the date the petition was received. The court shall give notice of the hearing to the petitioner, to the person whose commitment is sought, to his next of kin other than the petitioner, to his parents or legal guardian if he is a minor, to the head of the facility to which he has been committed if he has been committed for emergency care, and to any other person whose presence the court deems advisable. Copies of the petition and certificate shall be delivered to all of the parties, together with the notice of hearing.

(3) At the hearing the court shall hear all relevant testimony, including the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person whose commitment is sought shall be present unless the court has reason to believe that his presence is likely to be injurious to him; in this event the court shall appoint a guardian ad litem to represent him throughout the proceeding. The court shall examine the person whose commitment is sought in open court or, if it be deemed advisable, out of court. If the person whose commitment is sought has refused to be examined by a licensed physician, he shall be afforded an opportunity to consent to examination by a court-appointed physician. If he refuses and there is sufficient evidence to believe that the allegations of the petition are likely to be true, or, in any case, if the court believes that more medical evidence is necessary, the court may make a preliminary order committing the person to an appropriate community treatment resource for a period of not more than five days for purposes of a diagnostic examination. If after hearing all relevant evidence, including the results of any case findings, the court finds that the grounds for involuntary commitment have been met by clear and convincing proof, the court shall make a final order stating its findings and committing the person to treatment at or through a treatment resource deemed appropriate by the court. However, with respect to the state treatment and research center, the court shall be guided and restricted by the admission policies and procedures relating to such facilities established by the department. Except in the case of a person who is committed on the grounds that he is likely to inflict physical harm upon himself or others, the court shall not order a person's commitment unless there is sufficient evidence that an appropriate treatment resource is available. The court, in making its final findings, shall seek advice as to available treatment resources from the board district in the court's jurisdiction established under part IV of chapter 394, the Community Mental Health Act, and may seek such assistance from any other appropriate community agency or treatment resource.

(4) A person committed pursuant to this section shall remain under the treatment designated by the court for a period of thirty days unless sooner discharged. At the end of the thirty-day period, he shall automatically be discharged unless the treatment resource, prior to the expiration of such period obtains a court order for his recommitment upon the same grounds set forth in subsection (1) for a further period of ninety days unless sooner discharged. If a person has been committed because he is an alcoholic who is likely to inflict physical harm on himself or others, the treatment resource shall apply for recommitment unless such likelihood no longer exists.

(5) A person recommitted under the provisions of subsection (4) who has not been discharged by the treatment resource before the end of the ninety-day period shall automatically be discharged at the expiration of that period unless the treatment resource, prior to the expiration of such period, obtains a court order on the grounds set forth in subsection (1) for recommitment for a further period not to exceed six months. Further recommitment orders for a period not to exceed six months for each such order may be obtained on the grounds set forth in subsection (1) if the person has not been discharged.

(6) Upon receipt of a petition for recommitment pursuant to subsection (4) or subsection (5), the court shall fix a date for hearing no later than ten days from the date the petition was received. Notice of the application and the date of the hearing fixed by the court shall be served on the petitioner, on the person whose commitment is sought, on his next of kin, on the original petitioner under subsection (1), if different from the petitioner for recommitment, on one of his parents or on his legal guardian if he is a minor, and on any other person whose presence the court deems advisable. At the hearing the court shall proceed in the same manner set forth in subsection (3).

(7) The treatment resource may require any person committed under the provisions of this chapter to undergo such treatment as in its judgment will benefit him, including treatment at any inpatient, outpatient, or intermediate care facility.

(8) A person committed to the custody of a treatment resource for care shall be discharged at any time prior to the end of the period for which he has been committed when the following conditions are met:

(a) In the case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon himself or others, when such likelihood no longer exists;

(b) In the case of an alcoholic committed on

the grounds of need of treatment and care, accompanied by incapacity to make a determination respecting such need, either when such incapacity no longer exists or when it is evident that further treatment and care will not bring about further significant improvements in such person's condition.

(9) The person whose commitment or recommitment is sought shall be informed of his right to contest the application, to be represented by counsel at every stage of any and all proceedings relating to his commitment and recommitment, and to have counsel appointed for him by the court or provided for him by the court, if he wants the assistance of counsel and is financially unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall appoint counsel for him regardless of his wishes. Further, the person whose commitment or recommitment is sought shall be informed of his right to be examined by a physician of his choice. If the person is financially unable to obtain a physician and requests examination by a physician, a physician shall be appointed or provided by the court.

(10) A person committed under the provisions of this chapter may at any time seek to be discharged from commitment by writ of habeas corpus.

History.—§10, ch. 71-132.
***Note.**—Effective July 1, 1973.

396.112 Records of alcoholics and intoxicated persons.—

(1) The registration and other records of emergency services and of other treatment resources, whether inpatient, intermediate or outpatient, utilized under this chapter shall remain confidential, and information which has been entered in the records shall be considered privileged information.

(2) No part of the treatment records shall be disclosed without the consent of the person to whom it pertains, but appropriate disclosure may be made without such consent to treatment personnel for use in connection with his treatment and to counsel representing the person in any proceeding held pursuant to §396.102. Disclosure may also be made without consent upon court order for purposes unrelated to treatment after application showing good cause therefor. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the person to whom such information pertains.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, the secretary or his designees may open patients' records for purposes of significant research into the causes and treatment of alcoholism. The secretary shall not open such records, however, unless application is made by a researcher or research agency of professional repute, and unless the need for the records and the significance of the research for which they are to be used has been demonstrated to his satisfaction. Records shall not be opened under this subsection unless adequate assurances are given that patients' names and other identifying information will not be disclosed by the applicant.

History.—§11, ch. 71-132.

396.122 Visitation and communication of patients.—

(1) Subject to reasonable regulations regarding hours of visitation established by the division or by the agency in charge of a facility, alcoholics who are either voluntary or involuntary patients in any inpatient facility under this chapter shall be allowed opportunity for adequate consultation with counsel, and as much opportunity for continuing contact with family and friends as is consistent with an effective institutional program.

(2) The division may make reasonable rules regarding the use of the telephone by patients and the receipt of mail and other communications by patients in such facilities.

History.—§12, ch. 71-132.

396.131 Criminal commitment.—A person charged with or convicted of a crime may be committed to an appropriate treatment resource in accord with the provisions of law relating to probation, parole, or other disposition of persons charged with or convicted of criminal offenses.

History.—§13, ch. 71-132.

396.141 Payment for the care of alcoholics.—

(1) Reasonable charges and expenses for the care, maintenance, and treatment of alcoholics under any provision of this chapter, and reimbursement for such charges and expenses that may be advanced by the state or any political subdivision thereof, shall be a lawful charge against the person and estate or property, real, tangible, or intangible, of said alcoholic in this state. Such charges and expenses may lawfully be paid from the estate of said alcoholic by any authorized personal representative, parent, or legal guardian of said person. However, the payment thereof, in advance or otherwise, shall never be a prerequisite to the care, maintenance, and treatment of any person under any circumstances whatsoever. In cases of commitments to treatment and research centers, such charges and expenses shall be fixed or approved by the board of county commissioners of the county wherein the patient is or has been committed. Any suit or action instituted by the state or any political subdivision thereof for the recovery of such charges and expenses against the person or his duly authorized personal representative, parent or legal guardian, shall be brought by the state attorney of the judicial circuit in which said person was committed or by the department of legal affairs or both such state attorney and department of legal affairs, as the case may be, as party plaintiff.

(2) Notwithstanding anything to the contrary in this chapter, a private hospital or private facility, whether an outpatient or an inpatient unit, shall not be required to accept any person for treatment through commitment proceedings or otherwise, unless adequate arrangements for payment of the cost of such services are made.

(3) Any person assisted under this chapter or his responsible relatives may be required to contribute toward the cost of his subsistence, care or treatment, to the extent provided in applicable law and regulations. No person may be discriminated against on the basis of indigence.

History.—§14, ch. 71-132.

396.151 False information or lack of probable cause to secure involuntary hospitalization; penalty.—

(1) Any person who knowingly furnishes false information for the purpose of securing the involuntary hospitalization of any individual to any facility for the treatment of alcoholism shall be guilty of a misdemeanor of the first degree, punishable as provided in §775.082, or by fine not exceeding $5,000, or both.

(2) Any individual who, without probable cause for believing a person to be an alcoholic:

(a) Causes or conspires with or assists another to cause the involuntary hospitalization of any such person under this chapter, or

(b) Causes or conspires with or assists another to cause the denial to any person of any right accorded to him under this chapter

shall be guilty of a misdemeanor of the first degree, punishable as provided in §775.082, or by fine not exceeding $5,000, or both.

(3) Any individual who, without probable cause for believing a person to be an alcoholic, executes a petition, application, or certificate, pursuant to this chapter, by which such individual secures or attempts to secure the involuntary hospitalization or involuntary restraint of any such person shall be guilty of a misdemeanor of the first degree, punishable as provided in §775.082, or by fine not exceeding $5,000, or both.

History.—§15A, ch. 71-132.

396.1515 Immunity from personal liability.—The department, division, or bureau, or the administrator of any treatment facility acting pursuant to the provisions of this chapter, shall be entitled to rely in good faith upon the representations made for admission by any individual or any certification with respect to any individual made by a licensed physician. All persons acting in good faith, reasonably and without negligence in connection with the preparation or execution of petitions, applications, certificates or other documents or the apprehension, detention, discharge, examination, transportation, or treatment of an individual under the provisions of this chapter shall be free from all liability, civil or criminal, by reason of such acts.

History.—§15A, ch. 71-132.

***396.161 Local ordinances affecting intoxication and public drinking offenses forbidden.**—No county, municipality or other political subdivision of this state shall adopt any local law, ordinance, resolution, or regulation having the force of law rendering public intoxication in and of itself or being a common drunkard or being found in enumerated places in an intoxicated condition, an offense, a violation, or the subject of criminal or civil penalties or sanctions of any kind. Nothing herein contained shall affect any laws, ordinances, resolutions or regulations against drunken driving, driving under the influence of alcohol, or other similar offenses that involve the operation of motor vehicles, machinery or other hazardous equipment.

History.—§17, ch. 71-132.
***Note.**—Effective July 1, 1973.

396.171 Advisory council.—In order to comply with any requirements or conditions for receipt of federal moneys provided by any present or future acts of congress, the department may create an advisory council, or designate an existing advisory council, for the purpose of consulting with and advising the department in carrying out the provisions of this chapter.

History.—§18, ch. 71-132.

CHAPTER 402

HEALTH AND REHABILITATIVE SERVICES MISCELLANEOUS PROVISIONS

402.01 Council on training and research in mental health.
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402.01 Council on training and research in mental health.—There is created and established a council on training and research in mental health in Florida composed of eleven citizens of this state, to advise and consult with the division of mental health of the department of health and rehabilitative services in carrying out a program of training and research in mental health.

History.—§1, ch. 29880, 1955; §2, ch. 65-13; §1, ch. 69-56; §§19, 35, ch. 69-106.

402.02 Membership; expenses.—

(1) The members of the council shall be appointed by the governor for a term of office of four years or until their successors are appointed or qualified, except that of the first council appointed under this chapter, two members shall be appointed for a term of one year, three members shall be appointed for a term of two years, three members shall be appointed for a term of three years, and three members shall be appointed for a term of four years.

(2) The council shall be composed of six members from the professions concerned with mental health and five members of the general public.

(3) The council shall elect from its members a chairman and a secretary. The council shall meet at the chairman's discretion, provided however that at least one meeting each year be held.

(4) Members of the council shall serve without remuneration; however, members shall receive per diem and mileage as prescribed in §112.061, from place of their residence to place of meeting and return. The expenses necessarily incurred by the council members in the regular performance of their duties shall be paid from the moneys appropriated by the legislature, upon vouchers to be made out and signed by the chairman of the council, and approved by the director of the division of mental health.

History.—§2, ch. 29880, 1955; §9, ch. 59-1; §2, ch. 65-13

402.03 Powers and duties of the council.—The council shall have the following powers and duties:

(1) To consult with and recommend to the division of mental health regarding:

(a) The administration of all funds appropriated in this chapter.

(b) The awarding of training grants.

(c) The allotments for mental health research projects.

(2) To collect and prepare data on the needs for training and research in mental health.

(3) To promote the training of mental health personnel.

(4) To encourage research in mental health.

(5) To encourage coordination of training and research activities to avoid unnecessary duplication.

History.—§3, ch. 29880, 1955; §2, ch. 65-13.

402.04 Award of scholarships and stipends; disbursement of funds; administration.—The award of scholarships and/or stipends provided for herein shall be made by the council on training and research in mental health hereinafter referred to as the council, and the division of mental health hereinafter referred to as the division, shall handle the administration of the scholarship and/or stipend and the department of education, shall for and on behalf of the division handle the notes issued for the payment of the scholarships and/or stipends provided for herein and the collection of same. The council shall prescribe regulations governing the payment of scholarships and/or stipends to the school, college, or university for the benefit of the scholarship and/or stipend holders. All scholarship awards, expenses and costs of administration shall be paid from moneys appropriated by the legislature and shall be paid upon vouchers approved by the division of mental health and properly certified by the comptroller.

History.—§4, ch. 29880, 1955; §10, ch. 59-1; §2, ch. 65-13; §§15, 19, 35, ch. 69-106.

402.05 Requisites for holding scholarship and stipend.—Scholarships and/or stipends are to be awarded only to such residents of the state as intend to make psychiatric social work, psychiatry, psychiatric nursing and clinical psychology their professions. Among other essential requisites for holding a scholarship and/or stipend hereunder are citizenship, residence in Florida for a period of one year, good moral character, good health, exceptional scholarship, and the applicant shall have met the entrance requirement at a college or university for their professional specialization.

History.—§5, ch. 29880, 1955.

402.06 Notes required of scholarship holders.—Each person who receives a scholarship or stipend as provided for in this chapter shall execute a promissory note under seal, on forms to be prescribed by the department of education, which shall be endorsed by his parent or guardian or if he is over twenty-one years of age, by some responsible citizen and shall deliver said note to the division of mental health. Each note shall be payable to the state and shall bear interest at the rate of five percent per annum beginning ninety days after completion or termination of the training program. Said note shall provide for all costs of collection to be paid by the maker of the note. Said note shall be delivered by the division to said department for collection and final disposition.

History.—§6, ch. 29880, 1955; §2, ch. 65-13; §1, ch. 69-59; §§15, 35, ch. 69-106.

402.07 Payment of notes.—Prior to the award of a scholarship or stipend provided herein for trainees in psychiatric social work, psychiatry, clinical psychology or psychiatric nursing, the recipient thereof must agree in writing to practice his profession in the employ of any one of the following institutions or agencies for one month for each month of grant immediately after graduation or, in lieu thereof, to repay the full amount of the scholarship or stipend together with interest at the rate of five percent per annum over a period not to exceed ten years:

(1) The staff of one of the state hospitals of the division of mental health;
(2) The division of retardation;
(3) The division of corrections;
(4) A mental health clinic or guidance center;
(5) One of the state operated universities;
(6) The division of health;
(7) The bureau of alcoholic rehabilitation;
(8) The division of vocational rehabilitation;
(9) The juvenile and domestic relations courts;
(10) A public school;
(11) Such other accredited social agencies or state institutions as may be approved by the council.

History.—§7, ch. 29880, 1955; §1, ch. 59-249; §1, ch. 65-511; §2, ch. 65-14; §1, ch. 69-58; §§19, 35, ch. 69-106; §§1, 2, ch. 70-441.

402.11 Advisory council on mental health.—(1) There is established the Florida advisory council on mental health of the division of mental health of the department of health and rehabilitative services, which shall be in lieu of the advisory council for the division of mental health under the provisions of §402.15.

(2) The council shall consist of nine members to be appointed by the governor, three of whom shall be practicing physicians licensed by the state board of medical examiners; one of these shall be a physician whose practice is limited to the practice of psychiatric medicine; one council member shall be a member of the Florida association for mental health. The governor shall appoint the remaining five members of the council from among the citizens and residents of the state.

(3) The terms of office of said members shall be for four years or until their successors are appointed and qualified, except in case of appointment to fill a vacancy, in which case the appointment shall be for the unexpired term; provided however as to the initial terms, three members shall be appointed for a term of one year each, beginning July 1, 1965; three shall be appointed for a term of two years, beginning July 1, 1965; two shall be appointed for a term of three years each, beginning July 1, 1965; and one shall be appointed for a term of four years, beginning July 1, 1965.

(4) The members of the council shall serve without compensation except for necessary expenses incurred in performing their duties, which shall be paid out of the appropriation to said division, in accordance with the provisions of §112.061.

(5) The director of the division of mental health shall be an ex officio member of the advisory council on mental health. Not more than three members of said council shall be employees of a federal, state or county agency engaged in the care or treatment of the mentally ill, none of whom shall be employees of the division of mental health. The council shall appoint annually, from among its members, a chairman, vice-chairman and secretary. The council may make rules for the conduct of its affairs. The council shall meet at least quarterly and at other times upon the call of the chairman or the written request of a majority of the members or the call of the director.

(6) The council shall consider and advise on such matters as its members and the director of the division may request. The council shall consult with and make recommendations to the director in connection with the administration of the mental health programs of the division of mental health.

History.—§1, ch. 65-13; §§19, 35, ch. 69-106.
Note.—Formerly §965.041.

402.12 National community mental health centers act.—Any federal funds accruing to the state for the purposes of carrying out the national community mental health centers act of 1963 shall be paid to the division of mental health of the department of health and rehabili-

tative services and expended by it as directed by said department.

History.—§1, ch. 63-305; §§19, 35, ch. 69-106.
Note.—Formerly §965.16.

402.15 Divisions' advisory councils.—

(1) The governor may appoint an advisory council for each division of such size and so constituted as may, in his discretion, be advisable for the purpose of advising the department of health and rehabilitative services concerning the activities of the institutions under the jurisdiction of each division.

(2) Members of each advisory council so appointed shall receive no compensation, but shall be reimbursed from the budget of each division respectively, for the expense of attending meetings of the council as provided in §112.061.

(3) The council shall consult with the department and with the division director and shall make recommendations to the department in connection with the administration of programs of the several institutions under each division.

History.—§4, ch. 57-317; §19, ch. 63-400; §§19, 35, ch. 69-106.
Note.—Formerly §965.04.

402.16 Proceedings by department.—

(1) Whenever it becomes necessary for the welfare and convenience of any of the institutions now under the supervision and control of the department of health and rehabilitative services, or which may hereafter be placed under the supervision and control of said department, to acquire private property for the use of any of said institutions, and the same cannot be acquired by agreement satisfactory to the said department and the parties interested in, or the owners of said private property, the department is hereby empowered and authorized to exercise the right of eminent domain, and to proceed to condemn the said property in the same manner as provided by law for the condemnation of property.

(2) Any suit or actions brought by the said department to condemn property as provided in this section shall be brought in the name of the department of health and rehabilitative services, and it shall be the duty of the department of legal affairs to conduct the proceedings for, and to act as counsel for the said department of health and rehabilitative services.

History.—§§1, 2, ch. 7947, 1919; CGL 5104, 5105; §§1, 2, ch. 20973, 1941; §22, ch. 20930, 1941; §3, ch. 65-369; §§11, 19, 35, ch. 69-106.
Note.—Formerly §73.22; §965.061.

***402.17 Claims for care and maintenance; trust property.**—The department of health and rehabilitative services shall protect the financial interest of the state with respect to claims which the state may have for the care and maintenance of patients or inmates of state institutions under its supervision and control and shall administer money and other property received for the personal benefit of such patients or inmates. In order to carry out the provisions of this section the department may delegate any of its herein enumerated powers and duties to the director of the division under whose supervision such patient or inmate comes, and any such director to whom such powers and duties are so delegated is empowered, either personally or subject to his personal responsibility, through designated employees of his personal staff or of the institutions under his supervision to exercise such powers or perform such duties. The department is empowered to perform the following acts:

(1) CLAIMS FOR CARE AND MAINTENANCE.—

(a) Receive and supervise the collection of sums due the state;

(b) Bring any appropriate court action necessary to protect the interests of the state in order to collect any claim the state may have against any patient or inmate, former patient or inmate, or the guardian or administrator of any such patient or inmate, or any person against whom any such patient or inmate may have a claim;

(c) Obtain a copy of any inventory or appraisal filed with any county judge;

(d) Obtain from the division of family services a financial status report on any patient or inmate or former patient or inmate, or information relative to welfare payments due such patients or inmates or the ability of relatives or others responsible for such patients or inmates to pay all or part of the cost of their care and maintenance;

(e) Petition the court for appointment of a guardian or administrator for an otherwise unrepresented patient or inmate should the financial status report or other information indicate the need for such action, the cost of such action to be awarded against the estate of the patient or inmate;

(f) Represent the interest of the state in any litigation in which a patient or an inmate is a party in interest;

(g) File claims with any person, firm or corporation or with any federal, state, county, district or municipal agency on behalf of an unrepresented patient or inmate;

(h) Represent the state in the settlement of the estate of deceased patients or inmates or in the settlement of estates in which a patient or an inmate or a former patient or inmate against whom the state may have a claim has a financial interest.

(i) The department of health and rehabilitative services is authorized to charge off such accounts as may prove uncollectible which have accrued with respect to claims which the state may have for the care and maintenance of patients or inmates of state institutions under their supervision and control. Such accounts may be charged off if the head of the division concerned certifies such account as being uncollectible after diligent efforts have been made to collect them without success. In such event the head of the division shall certify the subject account to the department of legal affairs

setting forth the circumstances upon which he predicates the uncollectibility of the account and upon concurrence by the department of legal affairs, the account may be charged off.

(2) MONEY OR OTHER PROPERTY RECEIVED FOR PERSONAL USE OR BENEFIT OF ANY PATIENT OR INMATE.—

(a) Accept and administer as a trust any money or other property received for personal use or benefit of any patient or inmate;

(b) Deposit money so received in banks qualified as state depositories;

(c) Withdraw any such money and use the same to meet the current needs of the patient or inmate as they may exist from time to time;

(d) As such trustee to establish savings accounts, demand deposits, or time deposits, or invest in the manner authorized by law for fiduciaries such moneys not required to be used for current needs of the patient or inmate;

(e) To commingle such moneys for the purpose of deposit or investment.

(3) DEPOSIT IN STATE TREASURY.—Money received by the department of health and rehabilitative services or by any director in payment of claims of the state for the care and maintenance of any patient or inmate shall be transmitted to the state treasurer for deposit into the general revenue fund or into a trust fund for the operation of a division with the approval of the department of administration.

(4) DISPOSITION OF UNCLAIMED TRUST FUNDS.—Upon the death of any patient or inmate of an institution affected by the provisions of this section, any unclaimed money held in trust by the department or by a division director or by the state treasurer for him shall be applied first to the payment of any unpaid claim of the state against the patient or the inmate, and any balance remaining unclaimed for a period of one year shall escheat to the state as unclaimed funds held by fiduciaries.

(5) BOND OF DIVISION DIRECTORS.—The director of any division affected by this section shall give a faithful performance bond payable to the governor or his successors in office in an amount to be fixed by the department of health and rehabilitative services.

(6) LEGAL REPRESENTATION.—To the extent that the budget will permit, the department of legal affairs shall furnish the legal services to carry out the provisions of this section. Upon the request of the department of health and rehabilitative services or of the director of a division affected, the various state and county attorneys shall assist in litigation within their jurisdiction. The said department or any director may retain legal counsel to the extent of necessary legal services which cannot be furnished by the department of legal affairs and the various state and county attorneys.

(7) DEPOSIT OR INVESTMENT OF FUNDS OF CLIENTS.—

(a) Subject to the approval of the department of health and rehabilitative services, the divisions of youth services, retardation, or mental health may deposit any funds of children, patients, or residents in their possession in any bank in the state or may invest or reinvest such funds in bonds or obligations of the United States for the payment of which the full faith and credit of the United States is pledged. For purposes of deposit only, the funds of any child, patient, or resident may be mingled with the funds of any other children, patients, or residents.

(b) The interest or increment accruing on such funds shall be deposited in the appropriate welfare trust fund of the divisions of youth services, retardation, or mental health.

History.—§2, ch. 59-222; §1, ch. 65-279; §§11, 19, 35, ch. 69-106; §1, ch. 70-341; §1, ch. 70-439.

***Note.**—Section 12 of ch. 71-357, general appropriations act, fiscal year 1971-72, provides that notwithstanding the provisions of §402.17, funds received for the treatment or care of patients, based on the federal social security act, by an institution in the divisions of mental health or retardation, may be deposited into a trust fund for the operation of the division upon the approval of the department of administration.

Note.—Formerly §965.08.

402.18 Welfare trust fund created; use of.—

(1) All moneys now held in any auxiliary, canteen, welfare, donated or similar fund in any state institution under the jurisdiction of any division under the department of health and rehabilitative services shall be deposited in the welfare trust fund of that division, which fund is hereby created in the state treasury, or in a place which the department shall designate. The money in this fund is hereby appropriated for the benefit, education, and general welfare of patients or inmates and employees of any state institution under the jurisdiction of the division, including but not limited to the establishment, maintenance, employment of personnel for, and the purchase of items for resale at canteens or vending machines maintained at the state institutions and for the establishment, maintenance, employment of personnel and necessary expenses in connection with the operation of hobby shops, recreational or entertainment facilities, or other like facilities or programs at the institutions under the jurisdiction of the division.

(2) There shall be deposited in the welfare trust fund all net proceeds from the operation of canteens, vending machines, hobby shops, and other such facilities, and any moneys which may be assigned to the division welfare trust fund by patients, inmates, or others for deposit in said fund. The moneys of said fund shall constitute a trust held by the department and the division for the benefit and welfare of the patients or inmates and employees of the institutions under the jurisdiction of the division.

(3) Any contraband found upon, or in the possession of, any patient or inmate in any institution under the jurisdiction of any division shall be confiscated and liquidated and the

proceeds thereof shall be deposited in the welfare trust fund of the division.

(4) The director of any division may with the approval of the department invest in the manner authorized by law for fiduciaries any money in the welfare trust fund of the division that in his opinion is not necessary for immediate use, and the interest earned and other increments derived from such investments made pursuant to this section shall be deposited in the welfare trust fund of the division.

History.—§1, ch. 65-194; §§19, 35, ch. 69-106.
Note.—Formerly §965.081.

402.19 Photographing records; destruction of reports, etc.; effect as evidence.—The department of health and rehabilitative services may authorize each of the agencies and divisions under its supervision and control to photograph, microphotograph, or reproduce on film or prints, such correspondence, documents, records, data and other information as the department shall determine, and which is not otherwise authorized to be reproduced under chapter 119, whether the same shall be of a temporary or permanent character and whether public, private, or confidential, including that pertaining to patients or inmates of the agencies and divisions, and to destroy any of said documents after they have been reproduced. Photographs or microphotographs in the form of film or prints made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

History.—§1, ch. 65-195; §§19, 35, ch. 69-106.
Note.—Formerly §272.22.

402.20 County contracts authorized for services and facilities in mental health and retardation programs.—The boards of county commissioners are authorized to provide monetary grants and facilities, and to enter into renewable contracts, for services and facilities, for a period not to exceed two years, with public and private hospitals, clinics, and laboratories; other state agencies, departments, or divisions; the state colleges and universities; the junior colleges; private colleges and universities; counties; municipalities; towns; townships; and any other governmental unit or nonprofit organization which provides needed facilities for the mentally ill or retarded. These services are hereby declared to be for a public and county purpose. The county commissioners may make periodic inspections to assure that the services or facilities provided under this chapter meet the standards of the division of mental health and the division of retardation.

History.—§1, ch. 65-529; §§19, 35, ch. 69-106; §1, ch. 70-290; §1, ch. 70-439.
Note.—Formerly §965.071.

402.22 Education program for children under supervision of department of health and rehabilitative services.—

(1) LEGISLATIVE INTENT.—

(a) The legislature recognizes that the department of health and rehabilitative services has under its care children with the most critical problems of physical impairment, emotional disturbances, and social maladjustments of any in Florida.

(b) The legislature recognizes the vital role of education in the rehabilitation of such children under the care of the department. It is the intent of the legislature that all such children under the care of the department whose rehabilitation would benefit from educational services shall receive such services.

(c) The legislature recognizes that there are children under the care of the department of health and rehabilitative services who would benefit from receiving educational services, but who do not receive such services because they are utilized for nontherapeutic reasons for the operation and maintenance of the institution in which they are living. It is the intent of the legislature that all children under the care of the department whose rehabilitation would benefit from educational services receive such educational services.

(d) It is the intent of the legislature that educational services be coordinated with appropriate diagnostic and evaluative, social, follow-up, and other therapeutic services so that the effect of the total rehabilitation process is maximized.

(e) It is the intent of the legislature that the department of health and rehabilitative services be given resources for assisting children under its care in setting and accomplishing appropriate rehabilitation goals, including the achievement of academic or vocational skills through education. Sufficient funds and personnel should be provided for the educational programs of the department to insure that the educational resources of the department of health and rehabilitative services are equal to the resources available in other programs of the state system of public education for persons with similar maladjustments and disabilities.

(2) EDUCATION PLAN.—The department of health and rehabilitative services shall establish educational programs for all persons under the age of twenty-one under its care. The department of health and rehabilitative services and the department of education shall develop a comprehensive, detailed educational plan, including, but not limited to, a formula or formulas for adequately funding such educational programs on a regular basis, methods for determining eligibility of persons for the program, appropriate programs for each major type of disability, and with estimates of program costs and the proposed methods of program evaluation or assessment. Such plan shall be

developed by October 1 of the 1971-1972 fiscal year to permit recommendations for first year implementation to be included in the 1972-1973 legislative budget of the commissioner of education. Starting with the 1972-1973 fiscal year and each year thereafter, the legislative budget of the department of education shall reflect the educational needs of the department of health and rehabilitative services.

History.—§§1, 2, ch. 71-350.

CHAPTER 801

CHILD MOLESTER ACT

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801.011 Short title.—This chapter shall be known as the "Child Molester Act."

History.—§1, ch. 67-516.

801.021 Definition of words and phrases.—As used in this chapter, unless the context clearly indicates otherwise:

(1) "Division" means the division of corrections of the department of health and rehabilitative services.

(2) "Center" means the Research and Treatment Center established by this act under the jurisdiction of the division of corrections.

(3) "Advisory council" means the advisory council to the division in reference to the center, which shall be composed of the directors of the divisions of health, mental health, retardation, and youth services, the administrator of the Florida alcoholism treatment and research center of the department of health and rehabilitative services, and the head of the department of psychiatry at the University of Florida medical school.

(4) "Review council" means a council composed of the director or his designated representative, the chief psychiatrist of the center, the chief medical officer, the chief classification officer, and such other persons as may be designated by the director, whose purpose shall be to review the records of persons committed under this chapter and make recommendations regarding the disposition of their cases.

History.—§1, ch. 67-516; §§3, 19, 22, 35, ch. 69-106; §§1, 2, ch. 70-441, §281, ch. 71-377.

801.031 Florida Research and Treatment Center; authorization; purpose; transfers thereto.—

(1) The Board of Commissioners of State Institutions is hereby authorized to establish the Florida Research and Treatment Center under the direction of the division of corrections, to be located at a site determined by the board. The purpose of the center shall be to provide care, treatment and rehabilitation for sexually deviated nonpsychotic persons committed under the provisions of this chapter and §917.12, and other persons as provided by law. The center shall conduct scientific research of the causes, treatment and other aspects of sexual deviation.

(2) When the Florida Research and Treatment Center is fully operative in accordance with the purposes of this chapter, all nonpsychotic persons theretofore committed to the Division of Mental Health under this chapter may be transferred to the center.

History.—§1, ch. 67-516; §§19, 35, ch. 69-106; §§1, 2, ch. 70-441.
Note.—See former §801.16.

801.041 Definition of offense.—An offense under the provisions of this chapter shall include attempted rape, sodomy, attempted sodomy, crimes against nature, attempted crimes against nature, lewd and lascivious behavior, incest, attempted incest, assault (when a sexual act is completed or attempted), and assault and battery (when a sexual act is completed or attempted), when such acts are committed against, to, with or in the presence of, a person fourteen years of age or under.

History.—§1, ch. 67-516.
Note.—See former §801.02.

801.051 Court to order examinations; designate psychiatrists.—When a person has been convicted of an offense within the meaning of this chapter, the trial judge shall then appoint not less than two nor more than three qualified psychiatrists who are licensed physicians in the state and who have directed their professional practice primarily to the diagnosis and treatment of mental and nervous disorders for a period of not less than five years, to make a personal examination of the person so convicted. The court shall not proceed under the

provisions of this chapter until each psychiatrist so appointed shall have filed a separate written report of the result of his examination.

History.—§1, ch. 67-516.
Note.—See former §801.04.

801.061 Requirements of written reports.—Written reports made for the court under §801.051 shall include the defendant's social history, criminal record, if any, the circumstances of the offense, a physical and mental examination and all facts and findings necessary to assist the judge in passing sentence or committing such person, including likelihood of repetition of the offense.

History.—§1, ch. 67-516.
Note.—See former §801.05.

801.071 Examination by psychiatrist, where made.—The psychiatrists designated by the court shall forthwith examine the defendant. Examination may be made in the place where the defendant is detained, or, upon recommendation of the psychiatrist, the court may order the defendant confined for a reasonable period for observation and examination to another place of detention in a county, city, or privately operated hospital, clinic or teaching hospital with psychiatric facilities as may be designated by the psychiatrist. When the defendant is so transferred, the court may require the sheriff of the county where the defendant is tried to furnish sufficient personnel to guard such defendant.

History.—§1, ch. 67-516.
Note.—See former §801.06.

801.081 Examination fees; payment.—Each psychiatrist designated to examine a defendant shall receive a reasonable fee for such examination, which fee shall be fixed by the trial judge, plus reasonable traveling expenses; such fees, traveling expenses and the costs of sending a defendant to another place for examination, and the expenses of the defendant's maintenance therein and returning him when approved by the court, shall be a charge to the county in which the defendant is being tried. The county may recover such fees, traveling expenses and costs from the estate or property of the defendant.

History.—§1, ch. 67-516.
Note.—See former §801.07.

801.091 Powers and duties of the judge after conviction; furnishing copies of reports.—

(1) When any person who is determined not to be psychotic has been convicted of an offense within the meaning of this chapter, it shall be within the power and jurisdiction of the trial judge to:

(a) Sentence said person pursuant to the provisions applicable to the crime of which he was convicted.

(b) Defer or withhold imposition of sentence and instead commit such person to the custody of the division for an unspecified length of time for treatment and rehabilitation in the center or such other facility as may be designated by the division. The Division of Mental Health will receive persons committed under this act until such time as the treatment center is established.

(2) In the event said person is committed to the custody of the division under subsection (1)(b) the court shall direct the clerk to transmit certified copies of examiners' reports in duplicate to the division.

History.—§1, ch. 67-516; §§19, 35, ch. 69-106; §781, ch. 71-136.
Note.—See former §801.03.

801.102 Voluntary commitments.—Any person not charged with a criminal offense may voluntarily seek the aid of a state attorney, county solicitor or circuit judge in full confidence of no exposure or publicity, if he feels he is a sexually deviated person and feels that he is in need of treatment, and ask for commitment to the division for treatment. The court may at its discretion commit such person to the division for treatment, subject to acceptance of such person by the division when facilities permit. The person so committed shall be subject to the rules of the division while there. The said committed person shall be subject to the provisions of §§801.091(2), 801.111 and 801.121.

History.—§1, ch. 67-516; §§19, 35, ch. 69-106.
Note.—See former §801.16.

801.111 Return of committed person to court.—When a person committed to the custody of the division under the provisions of §801.091 (1)(b) shall have received available treatment and the division shall have exhausted its curative abilities upon such person, this person shall be returned to the committing court for further disposition of his case. The division shall forward to the committing court in such cases a written report on the treatment received by such person, a diagnosis of the person's condition, the progress and recommendations made by the treatment staff. The report shall include the staff's opinion as to whether or not such person is dangerous to society, and such other information as may be available.

History.—§1, ch. 67-516; §§19, 35, ch. 69-106.
Note.—See former §801.03.

801.121 Powers and duties of the judge upon receipt of report from division.—The trial judge upon the receipt of the report of the division referred to in §801.111 shall enter an order directing the sheriff to return the committed person to the jurisdiction of the court and shall:

(1) Suspend the execution of judgment and place the defendant upon probation; or

(2) Commit the defendant to the custody of the division with a definite or indeterminate sentence as provided by this chapter; or

(3) In the event the prognosis of the case is such it would indicate that no further treatment is necessary, the court may order the defendant released from custody without further charges pending against him; or

(4) In the event the committed person shall have been committed under the provisions of §801.102 and the prognosis of the case is such as would indicate that no further treatment is

necessary, the court shall order the committed person released from custody.

History.—§1, ch. 67-516; §§19, 35, ch. 69-106.

801.131 Execution of judgment may be suspended; probation; requirements.—

(1) The trial judge under whose jurisdiction a conviction is obtained may suspend the execution of judgment and place the defendant upon probation.

(2) The trial court placing a defendant on probation may at any time revoke the order placing such defendant on probation and impose such sentence of commitment as might have been imposed at the time of conviction.

(3) In placing a defendant on probation the court may require that the defendant take regular psychiatric, psychotherapeutic and counseling treatment. If this is required, the person treating the defendant shall make written reports at intervals not to exceed every six months to the court and to the probation officer supervising the defendant. The costs, fees and charges for treatment of the defendant while on probation shall be the responsibility of the defendant except that if he is indigent, these costs will be borne by the county.

History.—§1, ch. 67-516.
Note.—See former §801.08.

801.142 Recovery of cost of treatment.— The cost as fixed and approved by the division for the care and treatment of a person committed under this chapter and confined in a state institution may be recovered by the state from the estate or property, if any, of the defendant. The cost of treatment and care of an indigent person placed on probation and charged against the county may be recovered by the county from the estate or property, if any, of the defendant.

History.—§1, ch. 67-516; §§19, 35, ch. 69-106.
Note.—See former §801.09.

801.151 Examination; petition for, court order.—When any person is charged with an offense within the purview of this chapter, said person may petition the court for a psychiatric examination as heretofore set out and the written report shall be filed with the clerk of the court having jurisdiction of the offense for the purpose of assisting the court in the trial of the case. The court may, of its own initiative, or upon petition of an interested person, order such examination and report as heretofore set out.

History.—§1, ch. 67-516.
Note.—See former §801.10.

801.161 Examination of complaining witness upon request of defendant.—A defendant may ask the court for a psychiatric examination of the complaining witness before trial. The court may order such examinations and written reports in accordance with the procedure in §801.061.

History.—§1, ch. 67-516.
Note.—See former §801.101.

801.171 Treatment and research program; donations and grants.—

(1) The division shall employ psychiatrists, clinical psychologists, psychiatric social workers, and other professional staff as shall be necessary to carry out the provisions of this chapter. The division shall administer and supervise, through the professional staff, the treatment of persons committed under this chapter. The division shall make recommendations from time to time for extending treatment and improving facilities. It shall cause research to be conducted into the nature and causes of deviated sex behavior and criminal sexual psychopathic behavior and into the methods of preventing the development of such mental and emotional disorders and into improved methods and treatment of such mental and emotional disorders. The division shall make such recommendations and report the progress of such research to the department of health and rehabilitative services and to the advisory council.

(2) The division is authorized on behalf of the center to accept and receive research grants and donations of funds, medical supplies, and equipment from private foundations, firms, individuals and government agencies, and to cooperate with the federal, state, county and municipal governments to attract research grants and donations from all available sources.

History.—§1, ch. 67-516; §§3, 19, 35, ch. 69-106.

801.181 Advisory council.—The advisory council shall receive reports from the division on the progress of research and progress of treatment methods devised in the center. The advisory council shall confer with the division, evaluate existing treatment programs, make recommendations for new types of treatment and in general assist in the research and treatment aspects of this chapter. The members of the council shall serve without compensation but will be entitled to receive travel expenses from their respective agencies except that expenses of members not employed by the state will be paid by the division. The advisory council may disseminate such educational material as it deems advisable.

History.—§1, ch. 67-516; §§3, 19, 35, ch. 69-106.

801.191 Review council.—The review council as defined in §801.021(6) shall meet at least three times annually for considering the return to court or continuing treatment of persons receiving treatment under §§801.091(1)(b) and 801.102.

History.—§1, ch. 67-516; §§3, 35, ch. 69-106.

801.201 Review of records after commitment.—The review council shall cause to be brought before it within six months after commitment the complete record of a person committed under the provisions of this chapter for the purpose of considering and for recommending the return to court or further treatment under the provisions of this chapter. Thereafter at least once every two years such review shall be made. Upon recommendation of the

professional staff a committed person's records may be brought for review at any time. At the time of consideration by the review council of a person's record, the professional staff of the center shall present a report on such person giving the diagnosis, prognosis, and recommendation for further treatment, and any other information which would aid in determining the disposition of said person's case.

History.—§1, ch. 67-516; §§3, 35, ch. 69-106.
Note.—See former §801.13.

801.211 Availability of reports and records; confidentiality.—The clerk of the court that sentenced the person, the prosecuting attorney, the probation officer, any person who has examined or treated such persons and others having any available information on the person committed to the custody of the division shall make such information and reports available to be transmitted with the committed person to the custody of the division. All such reports prepared shall be confidential and shall be available only to public officers and employees in the performance of a public duty and the accused upon his request or by court order in judicial proceedings where the mental competency of the defendant is in issue.

History.—§1, ch. 67-516.
Note.—See former §801.12.

801.221 Sex offenses; publication of name under age sixteen prohibited.—No person shall print, publish, broadcast or televise, or cause to be printed, published, broadcast or televised, in any manner, the name or identity of any unmarried person under the age of sixteen who commits, or is the victim of, or who is a witness to or concerning any sex offense. Any person violating the provisions of this section shall upon conviction be guilty of a misdemeanor of the first degree, punishable as provided in §775.082 or §775.083.

History.—§1, ch. 67-516; §782, ch. 71-136.
Note.—See former §801.141.

801.231 Sex offenses; trial of person under age sixteen; courtroom cleared; exceptions.—In the trial of any case, civil or criminal, when any person under the age of sixteen is testifying concerning any sex offense, the court shall clear the courtroom of all persons except the parties to the cause and their relatives, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters and court reporters, which shall constitute a public trial within the meaning of §16, Art. I of the state constitution.

History.—§1, ch. 67-516; §1, ch. 69-216.
Note.—See former §801.15.

801.241 Treatment of persons not committed under child molester act.—The review council may admit persons other than those committed under this chapter who are confined in the custody of the division and who would benefit from treatment in the center.

History.—§1, ch. 67-516; §§3, 35, ch. 69-106.
Note.—See former §801.16.

801.251 Transfers to division of mental health.—Any person committed under this chapter to the custody of the division who is found to be or becomes psychotic may be transferred to the division of mental health of the department after being properly committed by the county judge.

History.—§1, ch. 67-516; §§19, 35, ch. 69-106.
Note.—See former §801.16.

CHAPTER 917

MENTALLY DISORDERED SEX OFFENDERS

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917.13 Definition.—"Mentally disordered sex offender" means a person who is not insane but who has a mental disorder and is considered dangerous to others because of a propensity to commit sex offenses.

History.—§1, ch. 57-1989; §1, ch. 67-451; §111, ch. 70-339.
Note.—See former §917.12.

917.14 Certifying defendant for hearing.—(1) The court may adjourn the trial or suspend the sentence and certify a defendant for a hearing and examination in the circuit court to determine whether the person is a mentally disordered sex offender if:

(a) The person has been charged with a noncapital crime or has been convicted of any crime, whether or not the crime is a sex offense;

(b) There is probable cause to believe that the person is a mentally disordered sex offender; and

(c) The mental disorder has existed for at least the immediately preceding four months.

(2) The court may certify a person under subsection (1) on its own motion, on motion by the prosecuting attorney, or on application by affidavit of the defendant.

History.—§§2, 3, ch. 57-1989; §1, ch. 67-451; §111, ch. 70-339.
Note.—See former §917.12.

917.15 Jurisdiction to hold hearing.—If the court trying the defendant has jurisdiction to try noncapital felonies, it shall hold the hearing and examination and shall have the same authority and duties as prescribed for the circuit court by this chapter.

History.—§§2, 3, ch. 57-1989; §1, ch. 67-451; §111, ch. 70-339.
Note.—See former §917.12.

917.16 Defendant not deprived of speedy trial.—The provisions of this chapter shall not deprive the defendant of his right to receive a speedy trial, but an application by the defendant to invoke the provisions of this chapter shall constitute a waiver of these rights. A defendant who is subsequently acquitted of the charges for which he was being tried shall no longer be subject to the provisions of this chapter.

History.—§1, ch. 67-451; §111, ch. 70-339.
Note.—See former §917.12.

917.17 Appointment of psychiatrists.—The court shall appoint not less than two or more than three qualified psychiatrists who are licensed in this state and who have directed their professional training and practice primarily to the diagnosis and treatment of mental and nervous disorders for a period of not less than five years. The psychiatrists shall personally examine the defendant to determine whether or not he is a mentally disordered sex offender. Each psychiatrist shall file a written report stating the results of his examination and his conclusions. The report shall not be competent evidence in any proceeding other than the hearing to determine whether the defendant is a mentally disordered sex offender. The failure of the defendant to answer pertinent questions propounded by the psychiatrists shall constitute contempt of court.

History.—§4, ch. 57-1989; §1, ch. 67-451; §111, ch. 70-339.
Note.—See former §917.12.

917.18 Procedure for hearing.—The court shall hold a hearing to determine whether the defendant is a mentally disordered sex offender. Evidence of the conviction and punishment of the defendant for crimes involving sexual motivation shall be competent at the hearing. The defendant shall have the right to be represented by counsel. The state attorney shall represent the state. An appointed psychiatrist may be called by the court, state, or defendant, and shall be subject to all legal objections concerning competency, bias, and qualifications as an expert. The court may examine the psychiatrist, but either party may object to questions asked by the court as though the psychiatrist were a witness for the adverse party. When a psychiatrist is called and examined by the court, the parties shall cross-examine in the order directed by the court. When a psychiatrist is called by one of the parties, the adverse party may examine him in the same manner as any other witness called by the party. The court, state, or defendant may call any other witnesses to give testimony material to the issues.

History.—§5, ch. 57-1989; §1, ch. 67-451; §111, ch. 70-339.
Note.—See former §917.12.

917.19 Commitment.—If the court deter-

nines that the defendant is a mentally disordered sex offender, it shall commit the defendant to the custody of the division of corrections of the department of health and rehabilitative services for care, treatment, and rehabilitation. The division of corrections shall assign the defendant to the Florida research and treatment center or other facility of the division.

History.—§5, ch. 57-1989; §1, ch. 67-451; §§19, 35, ch. 69-106; §111, ch. 70-339; §1, ch. 70-439; §1, ch. 70-441.
Note.—See former §917.12.

917.20 Periodic examination; discharge proceedings; recommencement of proceedings.—The division of corrections shall cause the committed person to be examined periodically to determine the progress of treatment and it shall file a written report of these examinations in the committing court not less than once a year. At any time after commitment, the division may file a written application in the committing court stating facts showing that the person has improved to a degree that he will not be a menace to others. The court shall set a hearing and order the committed person returned to the jurisdiction of the court. The hearing shall follow the procedures for the original hearing except that the appointment of psychiatrists shall be within the court's discretion. If the court determines that the person has not recovered from the disorder, it shall order his return to the institution to be held under the previous commitment. If the court determines that the person has recovered from the disorder to a degree that he will not be a menace to others, it shall order him discharged from the institution. If criminal proceedings are still pending against the person, they shall recommence at the time of the discharge order.

History.—§6, ch. 57-1989; §1, ch. 67-451; §§19, 35, ch. 69-106; §111, ch. 70-339; §1, ch. 70-439; §1, ch. 70-441.
Note.—See former §917.12.

917.21 Jurisdiction of committing court.—The committing court shall retain jurisdiction of the person from the commencement of the proceedings until final discharge and may order further examinations and reports on the person at any time during this period. The reports shall be available to the committed person's attorney for use in petitions for discharge and as evidence at discharge hearings.

History.—§7, ch. 57-1989; §1, ch. 67-451; §111, ch. 70-339.
Note.—See former §917.12.

917.22 Availability of records; confidentiality.—The clerk of the committing court, the prosecuting attorney, the probation officer, any person who has examined or treated the person, and others having information about a person committed to the division of corrections shall make the information and reports available to the division. The reports and information shall be confidential and shall be available only to public officers and employees in the performance of a public duty.

History.—§1, ch. 67-451; §§19, 35, ch. 69-106; §111, ch. 70-339; §1, ch. 70-441.
Note.—See former §917.12.

917.23 Inapplicability in capital cases.—The provisions of this chapter shall not apply to a person charged with a capital offense, but shall apply to a person convicted of a capital offense.

History.—§9, ch. 57-1989; §1, ch. 67-451; §111, ch. 70-339.
Note.—See former §917.12.

917.24 Civil proceedings.—The proceedings provided for in this chapter are civil and shall not alter the tests of mental capacity applied in criminal prosecutions.

History.—§10, ch. 57-1989; §1, ch. 67-451; §111, ch. 70-339.
Note.—See former §917.12.

917.25 Costs.—

(1) Psychiatrists appointed by the court shall be allowed reasonable fees for their services that shall be paid by the county in which the hearing is held. The county may recover the fees from the estate or property of the defendant.

(2) The state shall defray all costs incurred in the care and treatment of a person committed to a state institution, but the state may recover these costs from the estate or property of the person committed.

History.—§§8, 12, ch. 57-1989; §1, ch. 67-451; §111, ch. 70-339.
Note.—See former §917.12.

917.26 Witnesses; subpoena; examination; witness fees.—

(1) Any person believed by the court to have knowledge of the mental condition of the defendant shall be examined as a witness at the hearing. The court may order the clerk to issue subpoenas and compel attendance at the hearing of witnesses from any place within the boundaries of the state. A witness shall not be required to attend a hearing outside of the county of his residence unless an affidavit has been filed with the court stating that the affiant believes that the evidence of the witness is material and necessary and the court enters an order for the attendance of the witness on the subpoena.

(2) Witnesses attending a hearing on a subpoena issued under this chapter shall be entitled to the fees and expenses provided for criminal cases.

History.—§§11, 12, ch. 57-1989; §1, ch. 67-451; §111, ch. 70-339.
Note.—See former §917.12.

917.27 Transfer to division of mental health.—A person committed under this chapter to the custody of the division of corrections who is determined to be or becomes insane may be transferred to the custody of the division of mental health of the department of health and rehabilitative services after being legally committed by the county judge.

History.—§1, ch. 67-451; §§19, 35, ch. 69-106, §111, ch. 70-339; §1, ch. 70-439; §1, ch. 70-441.
Note.—See former §917.12.

917.28 Commitments prior to activation of Florida research and treatment center.—The division of mental health may receive persons committed under this chapter until the research and treatment center under the division of corrections is established as provided in chapter 801. The provisions of §§917.20-917.27 shall apply to persons committed to the division of mental health. When the Florida research and treatment center is fully operative, persons committed under this section to the division of mental health shall be transferred to the Florida research and treatment center.

History.—§1, ch. 67-451; §§19, 35, ch. 69-106; §111, ch. 70-339; §1, ch. 70-439; §1, ch. 70-441.

Note.—See former §917.12.

MISCELLANEOUS STATUTES

90.242 Psychiatrists as witnesses; nondisclosure of communications with patient.—

(1) As used herein, "patient" means a person who, for the purpose of securing diagnosis or treatment of his mental condition, consults a psychiatrist; "psychiatrist" means a person licensed to practice medicine who devotes a substantial portion of his time to the practice of psychiatry; "authorized representative" means a person empowered by the patient to assert the privilege granted hereunder and, until given permission by the patient to make disclosure, any person whose communications are made privileged in this section.

(2) Except as hereinafter provided, in civil and criminal cases, in proceedings preliminary thereto, and in legislative and administrative proceedings, a patient or his authorized representative, has a privilege to refuse to disclose, and to prevent a witness from disclosing, communications between patient and psychiatrist, or between members of the patient's family and the psychiatrist, or records, relating to diagnosis or treatment of the patient's mental condition.

(3) There shall be no privilege for any relevant communications under this section:

(a) If a judge finds that the patient, after having been informed that the communications would not be privileged, has made communications to a psychiatrist in the course of a psychiatric examination ordered by the court, provided that such communications shall be admissible only on issues involving the patient's mental condition;

(b) In a criminal or civil proceeding in which the patient introduces his mental condition as an element of his claim or defense, or, after the patient's death, when said condition is introduced by any party claiming or defending through or as a beneficiary of the patient.

History.—§1, ch. 65-404.

cf.—§473.141 Accountant and client, privileged communications.
§490.32 Psychologists as witnesses; nondisclosure of communications.

490.32 Psychologists as witnesses; nondisclosure of communications.—

(1) A person who, for the purpose of securing psychological diagnostic assessment or counseling, consults a psychologist licensed to practice psychology in this state, except as hereinafter provided, in civil and criminal cases, in proceedings preliminary thereto, and in legislative and administrative proceedings, has a privilege to refuse to disclose and to prevent a witness from disclosing communications between himself and the psychologist or between members of his family and the psychologist or records relating to his diagnostic psychological testing or counseling.

(2) There shall be no privilege for any relevant communications under this section:

(a) If a judge finds that the person evaluated by a psychologist, after having been informed that the communications would not be privileged, has made communications to a psychologist in the course of a psychological examination ordered by the court. However, such communications shall be admissible only on issues involving the person's mental or psychological condition;

(b) In a criminal or civil proceeding in which the person introduces his mental or psychological condition as an element of his claim or defense or, after his death, when said condition is introduced by any party claiming or defending through or as his beneficiary.

History.—§21, ch. 70-294.

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DIVISION OF MENTAL HEALTH

W. D. Rogers, M.D., Director
425 Larson Building
Tallahassee, Florida 32304

Hospitals for the Mentally Ill:

Florida State Hospital
Milton J. Hirshberg, M.D., Superintendent
Chattahoochee, Florida 32324

G. Pierce Wood Memorial Hospital
C. H. Adair, M.D., Superintendent
Arcadia, Florida 33821

South Florida State Hospital
R. H. Parks, M.D., Superintendent
Post Office Box 4437
West Hollywood, Florida 33023

Northeast Florida State Hospital
T. Fintan Burke, M.D., Superintendent
Macclenny, Florida 32063

Bureaus:

Bureau of Alcoholic Rehabilitation
Joseph C. Ziesenheim, Chief
Post Office Box 1147
Avon Park, Florida 33825

Deputy Directors:

Leroy A. Lawrence
Deputy Director
Administrative Services

Stuart N. Cahoon, M.D.
Deputy Director
Community Services

E. Arthur Larson, M.D.
Deputy Director
Hospitals and Institutes

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